

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ORIGINAL

75-7609

COMPETITIVE ASSOCIATES, INC.,

Plaintiff-Appellant,

-against-

ADVEST CO.,

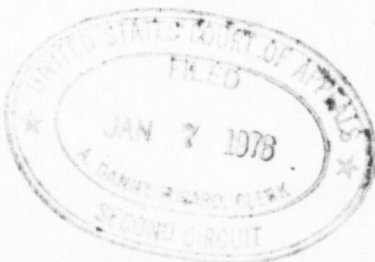
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX ON APPEAL

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JUDGE CARTER

72 CV 184F

DATE	PROCEEDINGS	Date Order Judgment N
May 1-72	FILED COMPLAINT. ISSUED SUMMONS.	
May 30-72	Filed Dft. Monroe J. Korn ANSWER.	MB5B
May 30-72	Filed Dft. Monroe J. Korn Notice to take deposition.	
May 31-72	Filed Dfts. Fire Fly Enterprises Inc & Clyde Davis ANSWER & demand for jury trial.	MB6B
Jun 13-72	Filed Stip & Order extending time for dft. Chartered New England Corp. to answer to complaint to 6/30/72. So Ordered Cooper J.	
Jun 12-72	Filed Dfts. Provident Securities Inc. & Pericles Constantinou ANSWER.	MB7B
Jun 20-72	Filed Dft. Aaron Sobel ANSWER. DEMANDS JURY.	MB8B
Jun 28-72	Filed Stip & Order extending time for Dft. Sherwood Securities Corp. to answer to complaint to 7/15/72. So Ordered Briant J.	
Jun 29-72	Filed stipulation and order extending dft. Chartered New England Corp.'s time to answer complaint to 7/15/72. So ordered. Frankal, J.	
Jul 3-72	Filed Stip & Order that the time for dft. Advest Co. to answer to complaint is extended to 8/7/72. So Ordered Briant J.	
Jul 10-72	Filed Notice of Appearance for dft. Advest Co.	
Jul 14-72	Filed stip & order that time for dft. Sherwood Securities Corp. to answer complaint is ext. from 7-15-72 to 8-7-72. So ordered. Briant, J.	
Jul 17-72	Filed dft's (Chartered New England) affidavit & notice of motion to strike complaint ret. 8-8-72.	
Jul 17-72	Filed dft's memorandum of law in support of his motion ret. 8-8-72.	
Jul 21-72	Filed summons with marshal's ret. SERVED:	
	Fire Fly Enterprises, Inc. UNABLE TO SERVE.	
	Chartered New England Corp. by Robert Gordon on 5/23/72.	
	Sherwood Securities Corp. by Brian McElulty on 6/6/72.	
	Advest Company by G.A. Boydorkas on 6/2/72.	
	Louis Randolph UNABLE TO SERVE	
	Clyde Davis by Annabell Davis, wife, on 5/17/72.	
	Lark Washburn UNABLE TO SERVE	
	Monroe J. Korn on 5/12/72.	
	Donald A. Carr UNABLE TO SERVE	
	Aaron Sobel by Mrs. Aaron Sobel, wife on 6/16/72.	
	Carol Gray UNABLE TO SERVE	
	Philip Kays UNABLE TO SERVE	
	Pericles Constantinou on 6/2/72.	
	Provident Securities, Inc. by P. Constantinou on 6/2/72.	
Aug 3-72	Filed ANSWER of Advest Co. to complaint.	MB9B
Aug 4-72	Filed stipulation and order extending dft. Sherwood Securities Corp.'s time to answer to complaint to 8/14/72. So ordered. Frankal, J.	
Aug 14-72	Filed dft's Sherwood Securities Corp. affidavit & notice of motion relief ret. 9-26-72.	
Jun 13-73	Filed Answer of Advest Co. to amended complaint.	D33X

dec page #3  
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(over)



DATE	PROCEEDINGS	Date Judge
May 16-73	Filed Defs. Emily, Davis, Sobel's Arr'd Answer and Cross-Claim, Jury Trial demanded.	
May 20-73	Filed ANSWER of Sherwood Securities Corp. to amended complaint.	
March 15-73	Filed Notice of change of address of deft. Chartered New England Corp. to 100 Park Ave., NY 10022	NYC
May 7-73	Filed Reply Memorandum in support of Defs. motion to dismiss amended complaint, etc.	
May 8-73	Filed MEMO. FMD. on motion papers filed 12/14/73. Chartered's motion is also denied, etc. So ordered, Carter, J.	
Jul 10-73	Filed deft. Clyde Davis' answers to pliff. interrogs.	
Jul 10-73	Filed deft. Monroe J. Korn's answers to pliff's. interrogs.	
Jul 10-73	Filed deft. Aaron Sobel's answers to pliff's. interrogs.	
Jul 10-73	Filed deft. Fire Fly Enterprises' answers to pliff's. interrogs.	
Jul 10-73	Filed defts. Advest Co.'s answers to pliffs. interrogs.	
Jul 9-73	Filed deft. Sherwood Securities' notice of motion for leave to withdraw as atty. for Sherwood Securities. Ret. July 20-73.	
Jul 17-73	Filed Answer of deft. Sherwood Securities to pliffs. interrogs.	
Jul 20-73	Filed by pliff notice to take deposition of deft. Advest Co. on 7-23-73 at the offices of pliffs Atty.	
Jul 20-73	Filed by pliff notice to take deposition of deft. Chartered New England Corp. on 8-3-73 at the offices of pliffs Atty.	
Jul 20-73	Filed by pliff notice to take deposition of deft. Sherwood Sec. Corp. on 7-25-73 at the offices of pliffs Atty.	
8-3-73	Filed consent order of substitution--ORDERED that the law firm of Rabbinand Silverman be substituted for deft. Sherwood Sec. Corp. in place of Royall, Koegel and Wells, Carter, J.	
8-7-73	Filed stip. and order that deposition of deft. Sherwood Sec. Corp. is adj. until Aug. 1, 1973. So ordered, Carter, J.	
8-7-73	Filed stip. and order that time for deft. Sherwood Securities Corp. to serve its objections or answers to pliffs. interrogs. is adj. until July 16, 1973. So ordered, Carter, J.	
8-10-73	Filed deft. Chartered New England Corp. ANSWER to amended complaint.	
8-10-73	Filed deft. Chartered New England Corp. answer to pliffs. interrogs.	
Aug. 21, 73	Filed Interrogatories to Plaintiff.	
Sep. 10, 73	Filed pliff. Notice to Take Deposition of Pericles Constantinou on 9/20/73	
Sep. 10, 73	Filed Pliff Notice to Produce.	
Oct. 10-73	Filed for Pliff. Notice of Deposition of Peter Engelbach, Foxcroft Sq. Jenkintown, Pa. on 10/25/73	
Oct. 18-73	Filed memo endorsed on defts motion for substitution of Attorney filed on 7-9-73 (granting Royall, Koegel & Wells to withdraw as Atty. for deft. Sherwood Securities Corp.): Motion to substitute granted. -- Carter, J. (n/a)	
Oct. 31-73	Filed Pliff. Notice of Motion returnable 11/9/73 for an order pursuant to Rule 27 of F.R.C.P.	
Nov. 5-73	Filed Pliff Notice to Take Deposition of M.J. Drifong & Co. on 11/12/73	
Nov. 30-73	Filed Pliff. Notice of Appearance of Rutowsky, Schwank & Davine	
Dec. 4-73	Filed deft. Dryfoos & CO. affdt. and notice of motion for an order to quash or in the alternative for a protective order ret. on: Dec. 14, 1973.	
Dec. 11-73	Filed affdvt. and notice of motion by defts (Fire Fly Ent., C. Davis, A. Sobel and M.J. Korn) for an order compelling pliff to answer interrogs. - ret. 12-21-73 at 10 AM in Room 1305	
Dec. 11-73	Filed plaintiffs notice to take deposition of deft. on 12-11-73	
Dec. 21-73	Filed affdvt. and notice of motion for an order dismissing the complaint (filed by deft. Sherwood Sec. Corp.) - ret. Jan. 4, 74 at 10:30 AM in Rm 1305	
Dec. 21-73	Filed deft. Sherwood's memorandum of law in support of motion to dismiss.	
Dec. 21-73	Filed pliffs answers to interrogs of deft. Advest Co., Firefly Enterprises, Clyde Davis, Monroe J. Korn and Aaron Sobel.	

## PROCEEDINGS

Dec-23-73 Filed affdvt. of Michael C. Davine in opposition to motion of Dryfoos & Co. for a protective order.

Dec-23-73 Filed memorandum of pliff. in opposition to to Dryfoos & Co. motion for a protective order.

Jan-9-74 Filed stip. and order that the motion of deft. Sherwood to dismiss is adj. to 1-18-74 and that the pliff's answering papers shall be served before Jan-1-74 - Carter, J.

Jan-13-74 Filed plaintiffs affdvt. of S. Pitkin Marshall in opposition to defts. motion to dismiss complaint.

Jan-13-74 Filed plaintiffs memorandum of law in opposition to defts motion to dismiss.

Jan-25-74 Filed defts. (Sherwood Securities) affdvt. of Frank R. Greenberg in support of motion to dismiss.

Feb-11-74 Filed affirmation of S. Pitkin Marshall.

Feb-11-74 Filed opposing affdvt. of Robert L. Gardner.

Feb-11-74 Filed **EMERGENCY** that the motion of Fire Fly Enterprises Inc. and the motion of Sherwood Securities Corp. for a protective order is denied. The motion of Dryfoos & Co. to require payments of costs of any necessary expenses it incurs in producing the documents requested by pliff. is granted. The motion of pliff. to require Chartered New England Corp. to name its employees who made the trade in Fire Stock is granted. Insofar as any motion seeks attorneys' fees and costs, it is denied. - Carter, J. So ordered. n/n

Apr-11-74 Filed defts' Fire Fly Enterprises Inc., C. Davis, A. Sobel and M.J. Korn's motion for summary judgment. - ret. 4-26-74

Apr-11-74 Filed defts' Fire Fly Enterprises, et. al.'s memorandum of law in support of motion for summary judgment.

May-20-74 Filed stip. and order adj. motion for summary judgment of 5-3-74-- Carter, J.

May-23-74 Filed Reply Memorandum for Deft.

May-24-74 Filed defts' Fire Fly, Davis, Korn & Sobel's notice to take depositions of pliff. on 6-18-74

Jun-14-74 Filed for Deft. Sherwood Notice of Motion for an order compelling discovery, returnable June 20, 1974 at 9:30 Am.

Jun-18-74 Filed pliff's affdvt. and notice of motion for an order that the pliff. need not submit to discovery - ret. 6-27-74

Jun-25-74 Filed defts (Fire Fly Enterprises, et. al.) notice to take depositions of Michael Risman, a witness on 7-23-74

Jun-25-74 Filed defts (Fire Fly Enterprises, et. al.) notice to take depositions of Alan R. Markison, a witness on 7-17-74.

Jun-27-74 Filed defts' Fire Fly Enterprises, et. al.'s notice to take: depositions of Ralph Shaw, a witness on 8-1-74  
depositions of Jerome Robert Randolph on 7-10-74 (a witness)  
deposition of A. Robert Randolph on 7-30-74 (a witness)  
deposition of David J. Servente on 7-22-74 (a witness)  
deposition of Henry Holmes Jr. on 8-14-74 (a witness)  
depositions of Philip Smith, a witness on 8-21-74  
deposition of Clifford McSwain, a witness on 7-25-74  
depositions of Arthur J.C. Underhill, a witness on 8-7-74  
depositions of Robert L. Sprinkle, III, a witness on 8-19-74  
depositions of Akiyoshi Yamada, a witness on 8-30-74  
depositions of J. Perry Smith, a witness on 8-5-74  
depositions of Peter Landau, a witness on 7-15-74  
depositions of Ezra Levin, a witness on 8-26-74  
depositions of Walter W. Latimer, a witness on 8-23-74  
depositions of Richard E. Doesel, a witness on 8-12-74.

(each of above listed - on separate notice to take depositions)



Competitive Associates, Inc. vs. Firefly Enterprises, et. al.

DATE	PROCEEDINGS
Jul-1-74	Filed deft. Fire Fly, Davis, Korn and Sobel's supplemental request to produce.
Jul-22-74	PRE-TRIAL CONFERENCE HELD BY Carter, J.
Jul-25-74	Filed stip. and order that Lawler, Starling and Kent are permitted to withdraw as counsel to the plaintiff and substituting Butkusky, Schwanke & Devine, Esqs. -- Carter, J.
Jul-17-74	Filed pltf's response to demand for production of documents.
Aug-2-74	Filed plaintiff's affdvt. and notice of motion for an order directing discovery - rat. 5-30-74
Aug-2-74	Filed memo endorsed on above motion: Motion disposed of at pre-trial conference - motion now moot. So ordered - Carter, J. m/n
Aug-2-74	Filed memo endorsed on deft. Sherwood Securities motion to compel: Motion disposed of at pre trial conference and now moot. So ordered. - Carter, J. m/n
Aug-2-74	Filed memo endorsed on pltf's motion filed 6-18-74 re discovery: Motion disposed of at pre-trial conference and now moot. So ordered. - Carter, J. m/n
Aug-2-74	Filed pltf's notice to take depositions of Philip Kave, a witness on 8-13-74 and request for production. - subp. issued
Aug-2-74	Filed pltf's notice to take depositions of Paul Tessler, a witness on 8-7-74 and request for production.
Aug-16-74	Filed notice of entry re order filed 7-25-74
Aug-22-74	PRE-TRIAL CONFERENCE HELD - Carter, J.
Sep-25-74	Filed defendants' statement of issues
Oct-2-74	Filed consent pre-trial order -- Carter, J.
Oct-13-74	Filed pretrial memorandum of the depts' Advest Co. and Chartered New England Corp.
Oct-21-74	Filed stip. and order of discontinuance with prejudice and without costs against defendants Fire Fly Enterprises, Inc., Louis Randolph, sued herein as Louis Randolph, Clyde Davis, Lark Washburn, Monroe J. Korn, Donald A. Gary, Aaron Sobel, Carol Gary and Phillip Kave. Carter, J. and order
Oct-21-74	Filed stipulation of settlement as indicated in re defendants Fire Fly Enterprises, Inc., Louis Randolph, Clyde Davis, Lark Washburn, Monroe J. Korn, Donald A. Gary, Aaron Sobel, Carol Gary and Phillip Kave. -- Carter, J.
Nov-11-74	Filed deft. Advest Co.'s request to pltf. for production.
02-14-75	Filed deft's reply memorandum.
02-14-75	Filed plaintiff's memorandum of law in opposition to motion made by defendants Fire Fly Enterprises, Inc. Davis, Sobel and Korn for summary judgment.
02-14-75	Filed plaintiff's response to defendants' 9(g) statement.
04-02-75	Filed pltf's notice to take depositions of Paras Constantinou on 4-9-75
04-17-75	Filed pltf's affdvt. of S. Pichin Marshall in support of application for ext. of time.
04-16-75	NON-JURY trial begun before Carter, J. as to depts. Chartered New England Corp., P. Con
04-17-75	trial continued Sherwood Sec. Corp. and Advest Co., Provident Sec
04-18-75	trial continued and concluded -- settled during trial as to defendants: Chartered New England Corp. and Sherwood Securities Corp. --- DECISION RESERVED as to remaining defendants. -- Carter, J.
06-05-75	Filed plaintiff's post-trial memorandum
07-23-75	Filed pltf's affdvt. of Michael Riman in opposition to deft's motion

(cont'd p. 1)

DATE	PROCEEDINGS	FILED
0-31-75	Filed OPINION #43165..(After trial decision was reserved as to deftr. Advest) For reasons stated herein, the Court agrees with the defendant that the sale of all of its Pileally holding by Competitive on May 19 could only have depressed the market. Since I find no actionable fraud on Advest's part, that issue need not be explored. Accordingly, plaintiff's claims are dismissed and judgment is ordered entered for defendant. It is so ordered. -- Carter, J.	FILED U.S. DISTRICT COURT SOUTHERD DISTRICT OF NEW YORK
0-15-75	Filed plaintiff's trial memorandum	
0-15-75	Filed plaintiff's reply memorandum	
0-15-75	Filed reply brief of the deftr. Advest Co.	
0-15-75	Filed post trial brief of the deftr. Advest Co.	
0-15-75	Filed pltr's affdr. and notice of motion granting pltr's a rehearing of the trial amending the findings of facts and entry of new judgment, etc. rat. on: Oct. 31, 1975 at 10am.	
0-21-75	Filed copy of TRANSCRIPT OF RECORD OF PROCEEDINGS dated April 16, 17, 18, 1975.	
0-21-75	Filed order placing action on the suspense docket of the Court -- Carter, J.	
0-23-75	Filed pltr's affdr. of S. Pitkin Marshall in support of pltr's request to adj. motion.	
0-30-75	Filed pltr's notice of appeal from order of 10-1-75 - copies to Day Barry & Howard and Feldsman & Frank, Esqs.	
1-20-75	Filed stipulation pursuant to Rule 11(f) of FRAP for partial record to be transmitted to the U.S.C.A.	

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S.C.A. NO. 75-7609

COMPETITIVE ASSOCIATES, INC.,

PLAINTIFF

CASE NO. 72 civ. 1847

ADVEST CO.,

DEFENDANT

JUDGE CARTER

EXTRACT OF DOCKET ENTRIES

DATE

PROCEEDINGS

November 24-75

Filed Judgment.

*[Signature]*  
Deputy Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COMPETITIVE ASSOCIATES INC.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.
	:	72 Civ. 1847
FIRE FLY ENTERPRISES, INC.,	:	
CHARTERED NEW ENGLAND CORP.,	:	
SHERWOOD SECURITIES CORP. ADVEST	:	<u>AMENDED COMPLAINT</u>
CO., PROVIDENT SECURITIES, INC.,	:	
LOUIS RANDOLPH, CLYDE DAVIS, LARK	:	
WASHBURN, MONROE J. KORN, DONALD	:	
A. GARY, AARON SOBEL, CAROL GARY,	:	
PHILLIP KAYE, and PERICLES	:	
CONSTANTINOU,	:	
	:	
Defendants	:	

1. The jurisdiction of this Court is based upon Section 22(a) of the Securities Act of 1933, as amended, Title 15, United States Code § 77v(a) (the "1933 Act"), and Section 27 of the Securities Exchange Act of 1934, as amended, Title 15, United States Code § 78aa (the "1934 Act").

2. The Plaintiff, Competitive Associates Inc. ("Competitive Associates"), is incorporated under the laws of the State of Delaware, and has its principal place of business in the State of California. It is a management open-end investment company registered with the Securities and Exchange Commission pursuant to Section 8 of the Investment Company Act of 1940, as amended.

3. The Defendant Fire Fly Enterprises, Inc. is a corporation incorporated under the laws of the State of Delaware.

The Defendant Chartered New England Corp. is a broker-dealer registered pursuant to Section 15 of the 1934 Act,

is a member of the National Association of Securities Dealers, Inc., and whose principal place of business is at 90 Broad Street, New York, New York 10004.

The Defendant Sherwood Securities Corp. is a broker-dealer registered pursuant to Section 15 of the 1934 Act, is a member of the National Association of Securities Dealers, Inc., and whose principal place of business is at 17 Battery Place, New York New York 10004.

The Defendant Advest Company, which is the successor-in-interest to Newburger & Company, is a broker-dealer registered pursuant to Section 15 of the 1934 Act, is a member of the National Association of Securities Dealers, Inc., and which is doing business at 115 Broadway, New York City, New York 10006.

The Defendant Provident Securities, Inc. is a broker-dealer registered pursuant to Section 15 of the 1934 Act, is a member of the National Association of Securities Dealers, Inc. and whose principal place of business is at 32 Broadway, New York, New York 10004. It is the underwriter of the securities which are the subject of this action.

The Defendant Louis Rudolph was, at all relevant times, an officer and/or director of Fire Fly Enterprises, Inc., and resides at 370 Lexington Avenue, New York, New York 10017.

The Defendant Clyde Davis was, at all relevant times, an officer and/or director of Fire Fly Enterprises, Inc., and resides at 859 East 2730, North Provo, Utah 84601.

The Defendant Lark Washburn was, at all relevant times, an officer and/or director of Fire Fly Enterprises, Inc., and resides at 697 Glen Caro Drive, Grand Junction, Colorado 81501.



The Defendant Monroe J. Korn was, at all relevant times, an officer and/or director of Fire Fly Enterprises, Inc., and resides at 415 Lexington Avenue, New York, New York 10017.

The Defendant Donald A. Gary was, at all relevant times, an officer and/or director of Fire Fly Enterprises, Inc., and resides at 105 West 55th Street, New York, New York 10020.

The Defendant Aaron Sobel was, at all relevant times, an officer and/or director of Fire Fly Enterprises, Inc., and resides at 64 Smith Littleton Road, New City, New York 10009.

The Defendant Carol Gary was, at all relevant times, an officer and/or Director of Fire Fly Enterprises, Inc., and resides at 145 West 45th Street, New York, New York 10036.

The Defendant Phillip Kaye was, at all relevant times, a principal holder of the securities of Fire Fly Enterprises, Inc., and resides at 75 East End Avenue, New York, New York.

The Defendant Pericles Constantinou was, at all relevant times, an officer and/or director of Provident Securities, Inc.

4. Between January 19, 1971 and April 28, 1971, Competitive Associates, Inc., purchased from certain of the defendants herein securities of Fire Fly Enterprises, Inc., another defendant herein, in the quantities and for the prices stated below:



<u>Date</u>	<u>Seller</u>	<u>Price Per Share</u>	<u>Quantity</u>	<u>Total Paid</u>
1/19/71	Chartered New England Corp.	5-1/2	3,100	17,050.00
1/19/71	Chartered New England Corp.	5-5/8	2,900	16,312.50
2/1/71	Chartered New England Corp.	5-3/4	3,000	17,250.00
2/2/71	Sherwood Securities Corp.	5-3/4	3,000	17,250.00
4/2/71	Newburger & Co.	5-3/4	4,350	29,362.50
4/26/71	Sherwood Securities Corp.	6-3/4	4,000	25,500.00
4/28/71	Sherwood Securities Corp.	6-1/2	2,650	17,225.00
5/5/71	Sherwood Securities Corp.	6-1/2	10	65.00
Total			23,010	\$140,015.00

The total purchase price for all of the shares purchased was \$140,015.00. All of the aforesaid sales took place within the Southern District of New York.

Failure to Deliver Prospectus in Violation  
of Sections 5 and 12(1) of the 1933 Act

5. These securities were carried or caused to be carried through the mails or in interstate commerce by the sellers for the purpose of sale or for delivery after sale, without being accompanied or preceded by a prospectus, in violation of Sections 5(a)(2) and 12(1) of the 1933 Act.

6. Upon information and belief, this failure to deliver the prospectus was an explicit, conscious deception of the Plaintiff by the Defendants as part of a conspiracy to defraud the Plaintiff entered into between the Defendants and in investment adviser of Plaintiff named Akiyoshi Yamada, which failure to deliver the prospectus was, as part of that conspiracy, fraudulently concealed by the Defendants, and the discovery by the

Plaintiff of this failure to deliver did not occur before June 1, 1971, which discovery could not earlier have been made by the exercise of reasonable diligence, and which discovery occurred less than one year prior to commencement of this action. This action has been commenced less than three years after the securities which are the subject of this action were bona fide offered to the public.

7. The plaintiff sold all 23,010 of its Fire Fly Enterprises, Inc. securities on May 19, 1971 to Chartered New England Corp. at a price of 3-1/2 net per share for a total of \$80,585.

8. Based upon the allegations of paragraphs 4 through 7, inclusive, the Plaintiff prays for damages suffered by the Plaintiff at the sale by it of the aforesaid Fire Fly Enterprises, Inc. securities in the amount of \$59,480, together with the costs and disbursements of this action.

Omissions in Prospectus of Required and Necessary  
Material Facts and Use of Deceptive Device in  
Violation of Sections 11, 12(2) and 17(a) of the  
1933 Act and Sections 10(b) and 15(c) of the 1934 Act

9. The allegations of paragraphs 1 through 8, inclusive, of this complaint are set forth by reference and incorporated herein.

10. Upon information and belief the plan of distribution for the Fire Fly Enterprises, Inc. securities being offered to the public included an arrangement whereby the issuer and/or underwriter of these securities had agreed with a portfolio manager of plaintiff named Akiyoshi Yamada that the plaintiff would purchase

a certain number of securities at a certain price and whereby the issuer and/or underwriter had agreed with the several broker-dealers selling such securities that a resale market in the securities was assured with no risk of loss to the selling broker-dealers. The aforesaid information and belief is based upon the market performance of the subject securities, upon the pattern of Yamada's practices with respect to other securities issues and upon certain information developed by the investigation of the Securities and Exchange Commission into the business practices of Yamada and developed by the plaintiff's review of the activities and performance of Yamada while he was an employee of plaintiff.

11. The Prospectus required to be prepared and distributed by the defendants in connection with the sale by them of Fire Fly securities failed to accurately describe the distribution spread and plan of distribution for those securities in that the Prospectus failed to disclose the scheme of distribution described in Paragraph 10 above. These omissions are in violation of Sections 11, 12(2) and 17(a)(2) of the 1933 Act.

12. The use by the defendants of the Prospectus which failed to accurately describe the plan of distribution described above was a deceptive device in violation of Sections 17(a)(1) and 17(a)(3) of the 1933 Act, and Sections 10(b) and 15(c) of the 1934 Act.

13. The offer and/or sale of these securities was made by means or instruments of transportation or communication in interstate commerce or by the mail, the Plaintiff acted in reliance upon the prospectus and the Plaintiff had no actual knowledge of the failure of the prospectus to state material facts



required and necessary to make the prospectus not misleading.

14. This action has been commenced less than three years after the securities which are the subject of this action were bona fide offered to the public, less than three years after the sale to the plaintiff of those securities, and less than one year after the discovery by the plaintiff of the omission of required and necessary material facts, which discovery did not occur before June 1, 1971, and which discovery could not earlier have been made by the plaintiff in the exercise of reasonable diligence.

15. Based upon the allegations of paragraphs 9 through 14, inclusive, the plaintiff seeks compensatory damages of Five Million Dollars (\$5,000,000), together with the costs and disbursements of this action.

WHEREFORE, the Plaintiff prays (i) for its first cause of action damages of \$59,480 suffered by the plaintiff, and (ii) for its second cause of action, compensatory damages of Five Million Dollars (\$5,000,000), together with the costs and disbursements of this action, and such other relief as to which the plaintiff may be entitled.

LAWLER, STERLING & KENT  
500 Fifth Avenue  
New York, New York 10036  
(212) 431-7950

By \_\_\_\_\_  
A Member of the Firm

STATE OF NEW YORK     )  
                              : ss.:  
COUNTY OF NEW YORK    )

Irene Friedel, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides in New York, New York.

That on the 15th day of November, 1972, deponent served the within Amended Complaint to the motion of defendant Chartered New England Corp. upon Dickstein, Shapiro & Galligan, Esqs., attorneys for defendant Chartered New England Corp.; upon Moore, Berson & Bernstein, Esqs., attorneys for Fire Fly Enterprises, Inc., Clyde Davis and Monroe J. Korn; upon Royall, Koegel & Wells, Esqs., attorneys for Sherwood Securities Corp.; upon Day Berry & Howard, Esqs., attorneys for Advest Company and upon Feldshuh & Frank, Esqs., attorneys for Provident Securities, Inc., and Pericles Constantinou, in this action, at the addresses designated by said attorneys for that purpose as follows:

Dickstein, Shapiro & Galligan, Esqs.  
745 Fifth Avenue, New York, N.Y. 10022

Moore, Berson & Bernstein, Esqs.  
660 Madison Avenue, New York, N. Y. 10021

Royall, Koegel & Wells, Esqs.  
200 Park Avenue, New York, N. Y. 10017

Day Berry & Howard, Esqs.  
One Constitution Plaza, Hartford, Conn. 06103

Feldshuh & Frank, Esqs.  
144 East 44th Street, New York, N.Y. 10017

by depositing true copies of same enclosed in postpaid properly

addressed wrappers in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

James Friedel

Sworn to before me this

15th day of November, 1972.

Diana Darlington

DIANA DARLINGTON, Notary Public  
State of New York No. 03-5921280  
Qualified in Bronx County  
Cert. Filed in New York County  
Commission Expires March 30, 1974



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COMPETITIVE ASSOCIATES INC., and  
COMPETITIVE CAPITAL CORPORATION,

Plaintiffs,

v.

Civil Action No.  
72-1847

FIRE FLY ENTERPRISES, INC., CHARTERED  
NEW ENGLAND CORP., SHERWOOD SECURITIES  
CORP., ADVEST CO., PROVIDENT SECURITIES,  
INC., LOUIS RANDOLPH, CLYDE DAVIS, LARK  
WASHBURN, MONROE J. KORN, DONALD A. GARY,  
AARON SOBEL, CAROL GRAY, PHILLIP KAYE,  
and PERICLES CONSTANTINOU,

ANSWER OF ADVEST CO.  
TO AMENDED COMPLAINT

Defendants.

June 8, 1973

FIRST DEFENSE

1. Paragraphs 1, 5, 6, 8, 10, 11, 12, 13, 14 and 15 are denied.

2. As to Paragraph 2 and 7, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

3. As to Paragraph 3, this defendant admits that it is the successor-in-interest to Newburger and Company, that it is a broker-dealer registered pursuant to Section 15 of the Securities Act of 1934, that it is a member of the National Association of Securities Dealers and that it does business at 115 Broadway, New York City, New York 10006. As to the remainder of said Paragraph 4, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

- 4 -

4. As to Paragraph 4, this defendant admits that on April 2, 1971 it sold securities of Fire Fly Enterprises, Inc. to the plaintiff Competitive Associates Inc. but denies that said sale took place within the Southern District of New York. As to the remainder of said Paragraph 4, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

5. The answers to Paragraphs 1 through 8 are hereby made the answer to Paragraph 9 as if fully set forth herein.

SECOND DEFENSE

The complaint fails to state a claim against this defendant upon which relief can be granted.

THIRD DEFENSE

This Court lacks jurisdiction over the subject matter of the complaint herein.

FOURTH DEFENSE

This action is barred by the statute of limitations.

DEFENDANT - ADVEST CO.

By Philip S. Walker

Philip S. Walker  
Day, Berry & Howard  
One Constitution Plaza  
Hartford, Connecticut 06103  
(203) 278-1330

Of Counsel:  
Randolph Guggenheimer, Jr.  
115 Broadway  
New York, New York 10006  
(212) 964-2300



CERTIFICATE OF SERVICE

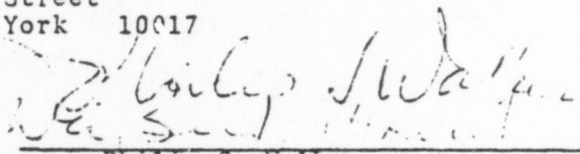
I hereby certify that a copy hereof has been served this 8th day of June, 1973 upon counsel for plaintiff and defendants, as listed below, by First Class Mail, postage prepaid:

D. Barry Morris, Esq.  
Lawler, Sterling & Kent  
Attorneys for Plaintiffs,  
Competitive Associates Inc. and  
Competitive Capital Corporation  
500 Fifth Avenue  
New York, New York 10036

Earle K. Moore, Esq.  
Moore, Berson & Bernstein  
Attorneys for Fire Fly Enterprises, Inc.,  
Clyde Davis and Monroe J. Korn  
660 Madison Avenue  
New York, New York 10022

George W. Brandt, Jr., Esq.  
Royall, Koegel & Wells  
Attorneys for Sherwood Securities Corp.  
200 Park Avenue  
New York, New York 10017

Martin Frank, Esq.  
Feldshuh & Frank  
Attorneys for Provident Securities, Inc.  
and Pericles Constantinou  
144 East 44th Street  
New York, New York 10017

  
Philip S. Walker  
Day, Berry & Howard  
One Constitution Plaza  
Hartford, Connecticut 06103

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT

Filed

OCT 2 1974

S.D. OF N.Y.

Index No.

72 Civ. 1847 R.L.C.

COMPETITIVE ASSOCIATES, INC., :

Plaintiff, :

-against- :

FIRE FLY ENTERPRISES, INC., et al., :

Defendants. :

PRETRIAL ORDER

✓ On June 20, 1974, the attorneys for the parties to this action appeared before the Court at a pre-trial conference held pursuant to ~~local Calendar Rules 6 and 13~~ and Rule 16 of the Federal Rules of Civil Procedure, and the following action was taken:

1. The parties agree that the trial of this action shall be based upon this Order and upon the pleadings herein;

2. The parties stipulated that the following facts are not in dispute for the purposes of the present action; each party, however, reserving the right to object to the materiality of any such stipulated fact or its relevancy to the issues:

i. This Court has jurisdiction over the claims asserted in this action and the parties herein pursuant to Section 22 of the Securities Act of 1933, 15 U.S.C. §77v(a), §27 of the Securities Exchange Act of 1934, 15 U.S.C. §78aa, and Rule 18(a) of the Federal Rules of Civil Procedure.

ii. The plaintiff, Competitive Associates, Inc. (now known as the "Seaboard Leverage Fund", and referred to herein as the "Fund"), was incorporated under the laws of the State of Delaware in February, 1969 and maintains its principal place of business at 9601 Wilshire Boulevard, Beverly Hills, California.

MICROFILM  
OCT 3 1974

(99)

The Fund is registered with the Securities and Exchange Commission pursuant to Section 8 of the Investment Company Act, 15 U.S.C. §80a-8, as a management, open end, non-diversified investment company. From January 1, 1971 to December 31, 1971, the executive officers and directors of the Fund were:

<u>NAME</u>	<u>OFFICE</u>
J. Robert Randolph	President and Director
Richard E. Boessel, Jr.	Director
Michael Risman	Vice President and Director
Alan R. Markizon	Secretary
Walter W. Latimer	Treasurer
Henry Homes, Jr.	Director
J. Perry Smith	Director
James B. Barron	Director
Arthur J.C. Underhill	Director

iii. At all relevant times the former defendant Fire Fly Enterprises, Inc., ("Fire Fly") was engaged in the business of exploration for uranium, vanadium and other mineral deposits. From May 27, 1970 to May 1, 1971, the executive officers and directors of Fire Fly were:

<u>NAME</u>	<u>OFFICE</u>
Louis Randolph	President and Director
Clyde Davis	Treasurer and Director
Lark Washburn	Vice President and Director
Monroe J. Korn	Director
Donald A. Gary	Director
Aaron Sobel	Director
Carol Gary	Vice President and Secretary



On May 1, 1971, Lark Washburn resigned as an officer and director and on July 23, 1971, Messrs. Monroe J. Korn, Donald Gary and Aaron Sobel resigned as directors of Fire Fly. On August 24, 1971, additional directors were elected to replace those who had resigned and new officers were elected as follows:

<u>NAME</u>	<u>OFFICE</u>
Clyde Davis	President and Director
Louis Randolph	Vice President, Treasurer and Director
Dr. William Pope	Director
Dr. Leland Davis	Director
Carol Gary	Vice President and Secretary

Except for Dr. Leland Davis, who resigned as a director on October 2, 1971, the foregoing officers and directors served in the capacities indicated until the annual meeting of stockholders of Fire Fly held on June 7, 1972.

iv. Phillip Kaye, then residing at 75 East End Avenue, New York, N.Y., owned beneficially and of record 77,900 shares of Fire Fly Enterprises, Inc., which represented 19.3% of outstanding shares before the public offering and 15.5% of the outstanding shares after the offering.

v. On January 4, 1971, Fire Fly effected a public offering of 100,000 shares of its common stock at an initial offering price of \$3.25 per share on a "firm commitment" basis.

vi. On January 4, 1971, the defendant Provident Securities Inc. ("Provident") entered into an underwriting agreement with Fire Fly pursuant to which Provident, as underwriter, agreed to purchase all of the 100,000 shares of Fire Fly common stock and undertook to offer these shares in part to the public at the initial public offering price less a concession of 15 cents per share.

vii. At all relevant times Provident was registered with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 as a broker-dealer and its offices were located at 32 Broadway, New York, New York.

viii. At all relevant times defendant Pericles Constantinou was President and a Director of Provident.

ix. At all relevant times Chartered New England Corp. ("Chartered") was registered with the Securities and Exchange Commission pursuant to Section 15 of the Securities Exchange Act of 1934 as a broker-dealer and maintained its principal place of business at 90 Broad Street, New York, New York 10004.

x. At all relevant times former defendant Sherwood Securities Corp. ("Sherwood") was registered with the Securities and Exchange Commission pursuant to Section 15 of the Securities Exchange Act of 1934 and maintained an office at 115 Broadway, New York, New York 10006.

xi. At all relevant times defendant Advest Company (successor in interest to Newburger & Company and referred to herein as "Advest") was registered with the Securities and Exchange Commission pursuant to Section 15 of the Securities Exchange Act of 1934 and maintained an office at 115 Broadway, New York, New York 10006.

xii. From the inception of the Fund until December 7, 1973, the Fund was managed by Competitive Capital Corporation (the "Manager"), pursuant to the terms of the management contract between them and subject to the responsibility of the Board of Directors of the Fund to evaluate the performance of the Manager and the Fund's right to terminate the Manager. Its offices are located at 9601 Wilshire Boulevard, Beverly Hills, California. The Manager is registered with the Securities and Exchange

Commission as an investment advisor pursuant to Section 203 of the Investment Advisors' Act, 15 U.S.C. §80(b)-1. At all relevant times the Manager also acted as investment advisor to the Competitive Capital Fund. Competitive Capital Fund is a management open-end diversified investment company registered with the Securities and Exchange Commission, pursuant to Section 8 of the Investment Company Act, 15 U.S.C. §80a-8.

xiii. On March 27, 1970 all of the outstanding stock of the Manager was acquired by the Seaboard Corporation ("Seaboard"). Seaboard is a Delaware corporation which has a class or classes of its securities registered with the Securities and Exchange Commission pursuant to §12(g) of the Securities Exchange Act of 1934, 15 U.S.C. §78L(g). Its offices are located at 9601 Wilshire Boulevard, Beverly Hills, California.

xiv. On December 1, 1969, The Seaboard Fund's Distributors, Inc. ("Distributors"), of 9601 Wilshire Boulevard, Beverly Hills, California, a wholly-owned subsidiary of the Seaboard Investment Corporation, a wholly-owned subsidiary of the Seaboard, became the principal distributor of shares of the Fund.

xv. All States Management Company ("All States") is a Texas corporation which at all relevant times was a wholly-owned subsidiary of Seaboard. All States is registered with the Securities and Exchange Commission as an investment advisor pursuant to Section 203 of the Investment Advisors Act, 15 U.S.C. §80b-3, and at all relevant times acted as investment advisor to The Admiralty Fund. The Admiralty Fund is registered with the Securities and Exchange Commission pursuant to Section 8 of the Investment Company Act, 15 U.S.C. §80a-8, as a management open end diversified investment company.



xvi. Boston Administrative & Research, Inc. ("Boston") is a Massachusetts corporation which at all relevant times was a wholly-owned subsidiary of Seaboard. Boston is registered with the Securities and Exchange Commission as an investment advisor pursuant to §203 of the Investment Advisors Act, 15 U.S.C. §80b-3 and at all relevant times acted as investment advisor to The Income Fund of Boston, Inc. The Income Fund of Boston, Inc. is a Massachusetts company which is registered with the Securities and Exchange Commission pursuant to Section 8 of the Investment Company Act, 15 U.S.C. §80a-8, as a management open end diversified investment company.

xvii. At a Board of Directors meeting of the Fund held on June 25, 1970, the Board unanimously resolved to recommend to the stockholders of the Fund that Takara be designated as a portfolio manager.

xviii. On October 9, 1970, the Fund and Manager entered into a portfolio management agreement with Takara Asset Management Co., Inc. ("Takara") to serve as a portfolio manager for the Fund. At all relevant times, Akiyoshi Yamada ("Yamada") was Chairman of the Board of Directors and sole shareholder of Takara. The said portfolio management agreement was signed by Yamada personally rather than as a representative of Takara. Pursuant to the October 9, 1970 contract, Takara was allocated a share of the Fund's assets to manage. As portfolio manager, Takara's duties were as are set forth in the said Agreement dated October 9, 1970.

xix. Between January 19, 1971 and April 28, 1971, the Fund purchased 23,010 shares of Fire Fly's common stock from the broker defendants named below in the amounts and at the prices set forth opposite their names:

<u>Date</u>	<u>Seller</u>	<u>Price per Share</u>	<u>Number of Shares</u>	<u>Total Paid</u>
1/19/71	Chartered	\$5-1/2	3,100	\$17,050.00
1/19/71	Chartered	5-5/8	2,900	16,312.50
2/ 1/71	Chartered	5-3/4	3,000	17,250.00
2/ 2/71	Sherwood	5-3/4	3,000	17,250.00
4/ 2/71	Newburger	6-3/4	4,350	29,362.50
* <del>4/26/71</del>	<del>Sherwood</del>	<del>6-3/8</del>	<del>4,000</del>	<del>25,500.00</del>
4/28/71	Sherwood	6-1/2	2,650	17,225.00
5/ 5/71	Sherwood	6-1/2	10	65.00
			23,010	\$140,015.00

xx. On or about the dates set forth above, Yamada, in his capacity as Portfolio Manager, instructed the Fund's trader, Clifford McSwain, to purchase the amounts of Fire Fly stock listed above at or about the prices listed above from the brokers listed above.

\* xxi. The Fund sold all 23,010 shares of its Fire Fly Common Stock on May 19, 1971 to Chartered at a price of \$3-1/2 per share for a total of \$80,535.00. After subtracting tax costs of \$287.63, the Fund's sale of Fire Fly yielded net proceeds of \$80,247.37, which was \$59,767.63 less than the total amounts paid for the shares.

3. The parties agreed that the documents listed on Schedules A and B hereto may be offered in evidence by the plaintiff, and the two defendants, respectively. The documents have been initialed by the attorneys for the parties for purposes of identification. Each party reserves the right to object on any and all grounds to the admission in evidence of any document marked with a double asterisk "\*\*\*". As to the documents marked with a single asterisk "\*", the parties agree that they will not object



to their admission on the grounds of identity, authenticity or best evidence although the parties do reserve the right to object to such documents on all other grounds. The parties do not object on any grounds to the admission of any document which is preceded by no marking at all in the "objection" columns of the Schedules attached hereto.

4. (a) The parties agreed that the plaintiff and the two defendants may call the witnesses named on Schedules C and D, respectively subject however, to any party hereafter deciding not to call any named witnesses and to call additional witnesses, which decision shall be followed by prompt notice of the identity of such additional witnesses to each other party and to the Court. In addition, any party may call any of the witnesses named on any other party's designated list of witnesses.

(b) The parties agreed that each party may call one expert witness who shall be named later in addition to those named on the Schedules attached hereto.

5. The plaintiff stated that the following are all of the claims for damages or for other relief in this action, as of the date of this Order:

(a) damages amounting to \$59,767.63, together with interest and attorneys' fees arising out of the alleged failure of the defendants to deliver a prospectus under §5 and 12(1) of the Securities Act of 1933, as amended, in connection with the purchase of 23,010 shares of the common stock of Fire Fly Enterprises, Inc.

(b) damages in the sum of \$59,767.63 for consequential damages together with interest and attorneys' fees based upon alleged violations by the defendants of §11, 12(2), and 17(a) of the Securities Act of 1933 and of §10(b), Rule 10b-5 and §15(c) of the Securities Exchange Act of 1934.

6. The Plaintiff notified the defendants and the Court that it had settled its claims against the defendants, Fire Fly Enterprises, Inc., Sobel, Korn, and Davis upon payment by them of \$7,000 and that it had settled its claims against the defendant, Sherwood, upon payment of \$3,000.

#7. The parties did not agree as to the issues to be tried. The Plaintiff claims that the issues to be tried are as follows:

(a) whether the defendant, Advest, delivered a prospectus to the plaintiff in connection with plaintiff's purchases of Fire Fly stock;

(b) whether the defendant, Chartered, delivered a prospectus to plaintiff in connection with plaintiff's purchases of Fire Fly stock;

(c) whether the Fire Fly Prospectus dated January 4, 1971, contained statements which were false or misleading or omitted to state matters which were necessary in order to make the prospectus not misleading;

(d) whether the defendants, or any of them, used any manipulative or deceptive device in connection with the purchases or sales of Fire Fly stock;

(e) whether on the facts provable hereunder there was a violation by the defendants, or any of them, of Sections 11, 12, and 17(a) of the Securities Act, 15 U.S.C., §77(k), 77(l), and 77(q) or §10(b) of the Securities Exchange Act, 15 U.S.C., §78(j) and Rule 10b-5 promulgated thereunder;

(f) whether on the facts provable thereunder, the acts of the defendants, or any of them, constituted common law fraud.

So Ordered:

10/1/74

S/ Robert L. Carter  
J.S.D.J.

ENTRY OF THE FOREGOING  
ORDER IS CONSENTED TO:

BUTOWSKY, SCHWENKE & DEVINE

By: S/ S. Pitkin Marshall  
Attorneys for Plaintiff

FELDSHUK & FRANK

BY: Note

Attorneys for Defendant, Pericles Constantinou

DAY, BERRY & HOWARD

BY: Day Berry Howard - per its pursuant  
Attorneys for Defendant, Advest to arrangement  
between all counsel

Leonard Toboroff, Esq.

Attorney for Defendant, Chartered

\* As to the facts stated in paragraph 2, sub-paragraph xix, defendants specifically except a trade which the plaintiff alleges was made on April 26, 1971 with Sherwood Securities Corp. for 4,000 shares, and do not agree that such a trade was made.

As to sub-paragraph xxi, the defendants do not agree to the figures stated therein, to the extent that those figures do include the purchase of 4,000 shares from Sherwood on April 26, 1971. With these specific exceptions, the defendants do agree that the facts and figures stated in the aforesaid paragraphs are not at issue.

# The defendants have filed and served under separate cover their statement of issues which shall be treated as part of this pretrial order.

Note Defendant, Pericles Constantinou, is involved in a personal bankruptcy proceeding. His attorneys do not consent to this pretrial order because the General Order of Bankruptcy has stayed all actions against Constantinou.



SCHEDULE A

Documents Offered by Plaintiff:

OBJECTIONS:

1. CAI buy orders as follows:

1/19/71	3,100 shares + 2,900 shares
2/ 1/71	3,000
2/ 2/71	3,000
4/ 2/71	4,350
4/28/71	2,650
5/ 5/71	10

\* 2. CAI stock ledger sheet for Firefly Enterprises.

\* 3. CAI sell order 5/19/71 - 23,010 shares.

\* \* 4. SEC Security Transactions Questionnaire for Sherwood Securities Corp. (Exhibit A to Interrogatory answers of Sherwood).

\* \* 5. SEC Security Transactions Questionnaire for Haxton Corp. (Exhibit B to Interrogatory answers of Sherwood).

\* 6. Defendant, Advest & Co. answers to Plaintiff's interrogatories.

\* 7. Description of Documents and Exhibits lettered A through Q supplied by Defendant, Advest & Co., at EBT of 7/20/73. (Index to which is attached hereto)

8. Final S-1 Registration Statement dated January 4, 1971 (to be obtained from Guttman) (Or Prospectus used as Exhibit L in couple of EBT's or both).

\* 9. Underwriting Agreement dated January 4, 1971.

\* 10. Selected Dealer Agreement dated Jan. 5 between Chartered by Bruce Zins and Provident.

\* 11. Letter from Chartered New England by Elgin Cary to Provident Securities dated December 22, 1970.

12. Portfolio Manager Agreement signed by Yamada, Competitive Associates and Competitive Capital and dated October 9, 1970.

\* \* 13. Series of "BUY" order tickets of Provident Securities Inc. for Firefly Enterprises Inc. dated Jan. 5, 1971 consisting of 71 pages.

\* \* 14. Series of pages of Provident Securities Inc. Stock Record Book for Firefly Enterprises Inc.

\* \* 15. Series of blotter pages from J.M. Dryfo showing trades of Firefly numbering of pages consisting of pages numbered 2, 11, 13, 29, 30, 31, 32.

\* \* 16. Series of Trading Account pages for Paul Tessler at Chartered New England for Jan. through April 1971 consisting of 10 pages.

\* \* 17. Customer Account Cards to be obtained from Dryfoos & Co.

\* \* 18. All documents which may be obtained in future from Chartered New England Corp. including reproductions of S.E.C. "Blue Sheets" produced by Chartered showing all trades of Fire Fly.

\* \* 18. (a) Series of New Account Cards for Chartered customers who purchased Fire Fly.

- \* 19. Statement of rules relating to Acceptance of New Accounts supplied by Sherwood Securities Corp.
- \* 20. Copies of Trade Tickets numbering 41 pages showing trades by Sherwood Securities Inc. in Firefly.
- \* 21. Sell Tickets of Sherwood to Competitive Associates - Pl's Exhibit 2 at EBT of Meselsohn 8/1/73.
- \* 22. 3 Confirmations of trades of Firefly from Sherwood to CAI, copies supplied by Sherwood dated 2/9/71, 4/26/71, and 4/28/71, respectively.
- \* 23. Sherwood Securities New Account Card for Competitive Associates Inc.
- \* 24. Letter dated April 24, 1974 from Frank R. Greenberg to S. Pitkin Marshall.
- 25. Copies of Pink Sheets for Firefly from Jan. 4, 1971 through May 28, 1971.
- \* 26. Transcript of Deposition of Phillip Kaye.
- \* 27. Transcript of Deposition of Paul Tessler.
- \* 28. Transcript of Deposition of Elgin Carey in Competitive Associates Inc. v. Akiyoshi Yamada, S.D.N.Y., 72 Civ. 1986 T.P.G.
- \* 29. Transcript of Deposition of Pericles Constantinou.
- \* 30. Transcript of Deposition of Samuel Switsky.
- \* 31. Transcript of Deposition of Peter Engelbach.
- \* 32. Transcript of Deposition of Robert Gardner.
- \* 33. Transcript of Deposition of Firefly Enterprises, by Monroe Korn.
- \* 34. Transcript of Deposition of D.T. O'Brien.
- \* 35. Transcript of Deposition of Raymond Meselsohn.
- \* 36. Transcript of Deposition of Akiyoshi Yamada in Competitive Capital Corp. v. Akiyoshi Yamada, S.D.N.Y., 72 Civ. 1986 T.P.G.
- \* 37. Letter dated May 20, 1971 from Alan Markizon to Charles J. Sheils.
- \* 38. Letter dated May 27, 1971 from Alan Markizon to Eldo Casari.
- \* 39. Advest New Account Cards for all customers of Advest who bought or sold Fire Fly to or through Advest.
- \* 40. Compliance Manual of Advest.
- \* 41. Sherwood Securities' answer to interrogatories.

Description of Exhibits contained in Document #7-Schedule A

Exhibit

Description

- A New Account Form-July 2, 1970 N.Y.C. - Mutual Fund Dep't - No. 10300697-0
- B Memo Trading Authorization - October 19, 1970
- C Trade Record For Fire Fly For April, 1971
- D Annual Statement - No. 10300697 - Competitive - 1970-NYC office
- E Confirmation: Purchase by Competitive of 4350 shares of Fire Fly @ 6 3/4 April 2, 1972
- F Confirmations: Sales by thirteen Advest customers on April 2, 1971 at 6 1/2

Name

Shares

Philip E. Goldfein	250
Emanuel R. Tress	500
Rose H. Shaw	900
Ivan Popkin	200
Barry Leonard	100
Adele A. Kauffman	100
Edward J. Gradarek	200
Anne Grabarek	200
Hyman Escava	100
Alyce F. Bergman	500
William Frankel	300
Arthur P. Dellis	300
William Davis	<u>700</u>
Total	4350

- G Confirmation: sale by Jacob Blumenthal of 1000 shares of Fire Fly on May 18, 1971 at 3 1/2
- H. Confirmation: sale by William Davis of 500 shares of Fire Fly on June 14, 1971 at 4 3/8
- I. SEC Security Transactions Questionnaire on Fire Fly



New Account Form - April 19, 1971 - No. 10502631-0

Annual Statement for Competitive Associates - 1971 - No. 10502631-0

Letter from Competitive Associates to Advest. - May 27, 1971

Order Tickets for Buy and Sell 4350 shares on April 2, 1971

Order Ticket - Sold - Blumenthal - May 18, 1971

Order Ticket - Sold - Davis - June 14, 1971

Preliminary Prospectus - July 30, 1970

Final Prospectus - January 4, 1971 with supplements dated February 16, 1971  
and March 16, 1971

OBJECTIONS:

SCHEDULE B - Documents Offered by Defendants:

1. Firefly pink sheets through June, 1971.
- \* 2. Each prospectus of Competitive Associates, Inc. 1970 through 1974.
- \* 3. Competitive Associates, Inc. forms N-1R filed with the SEC for the fiscal years ending in 1971, 1972 and 1973 with exhibits thereto.
- \* 4. Complaint for injunction in 1971, civil action filed in this court entitled Securities and Exchange Commission v. Everest Management Corporation, et. al.
- \* 5. June 27, 1972 memorandum regarding Takara Asset Management Co., Inc. of Butowsky, Schwenke & Devine submitted to the Board of Directors of Competitive Associates, Inc.
- \* 6. Order of attachment dated December 23, 1970.
- \* 7. Minutes of June 25, 1970 directors meeting of Competitive Associates
- \* 8. Proxy materials for 1970 shareholders meeting of Competitive Associates.
- \* 9. Minutes of special meeting of shareholders on September 30, 1970 as adjourned to April 7, 1970 as adjourned to October 9, 1970.
10. Fund Manager agreement between Competitive Associates and Competitive Capital Corporation.
11. Portfolio Manager agreement between Competitive Associates, Inc., Competitive Capital Corporation, and Takara Asset Management Co., Inc.
- \* 12. Minutes of the October 9, 1970 directors meeting of Competitive Associates.
- \* 13. Minutes of the January 13, 1970 directors meeting of Competitive Associates.
- \* 14. Segment of minutes of Competitive Associates, Inc. Board meeting dealing with Takara Asset Management Co. (January 13, 1971).
- \* 15. March 30, 1971 letter from Markizon to Yamada.
- \* 16. Segment of minutes of Competitive Associates, Inc. Board meeting dealing with Takara Asset Management Co. (May 12 - 13, 1971)
- \* 17. Treasurer's report submitted to Competitive Associates, Inc. directors for meeting on May 12 - 13, 1971.
- \* 18. Minutes of the February 10, 1972 directors meeting of Competitive Associates.
- \* 19. March 3, 1971 memorandum from Alan R. Markizon to Portfolio Managers re: compliance and related problems.
- \* 20. March 5, 1971 memorandum from Alan R. Markizon to directors of Seaboard Funds with attachments.
21. July 22, 1971 memorandum from Alan R. Markizon to Randolph re: May 12, 1971 inspection of Takara.
- \* \* 22. June 12, 1971 letter from Yamada to Randolph with attachments.
- \* \* 23. July 7, 1971 letter from Alan R. Markizon to Yamada.

- \* 24. October 22, 1970 letter from Alan R. Markizon to Yamada.
- \* 25. November 19, 1970 letter from <sup>Jack</sup>~~Harris~~ Smith to Competitive Capital Corporation.
- \* 26. March 3, 1971 memorandum from Alan R. Markizon to Portfolio Managers.
- \* 27. December 9, 1970 letter from Alan R. Markizon to ~~Harris~~ Smith.
- \* 28. SEC subpoena dated December 30, 1970 to Takara in the matter of Everest Management Corporation.
- \* 29. February 24, 1971 letter from Alan R. Markizon to Yamada.
- \* 30. Memorandum dated March 1, 1971 from Alan R. Markizon to Risman re: "Trip to the East".
- \* 31. Two letter dated March 8, 1971 from Alan R. Markizon to Yamada.
- \* 32. March 30, 1971 memorandum from Alan R. Markizon to Randolph re: March 19, 1971 visit to Takara.
- \* 33. Pleadings in Securities and Exchange Commission v. Seaboard Corporation, et. al., U.S.D.C. Central District of California, Civil Action 74-567-MML.
- \* 34. Firefly buy orders from Competitive Associates, Inc.
- \* 35. Releases and stipulations on settlements of co-defendants Sherwood and Firefly.
- \* 36. Firefly's transfer sheets for 1971.
- \* 37. Chartered New England Corporation confirmation slips for Firefly in the year 1971.



SCHEDULE C

Witnesses for Plaintiff:

1. Michael Risman
2. Alan Markizon
3. Clifford McSwain
4. Akiyoshi Yamada (or statement of Counsel that he will take the Fifth)
5. Phillip Kaye
6. Paul Tessler
7. John P. Galanis
8. Joseph M. Wiener
9. Peter Engelbach
10. Pericles Constantinou

Possible witnesses who may be called by plaintiff depending upon availability and plaintiff's ability to subpoena:

11. Samuel Switsky
12. Allen Weintraub
13. Frank Neuberger
14. Milton Bombach
15. Robert Blankoph
16. Bruce Zins
17. Elgin Carey
18. Raymond Meselsohn
19. ~~Pericles-Constantinou~~
20. Ralph Citerella
21. Jacob Blumenthal
22. Jack Shaw
23. Norman Falk
24. William Davis
25. Hyman Escava
26. ~~Jacob-Blumenthal~~
27. Rose Shaw

23. Arthur Bellis
29. William Frankel
30. Alice Bergman
31. Philip Goldfein
32. Dr. Edward Grabaiek
33. Adele Kauffman
34. Barry Leonard
35. Ivan Popkin
36. Emanuel Tress
37. Norman Shaw
38. Oceanography Mariculture Industries Inc. by its officers  
or directors.
39. Howard Ackerman
40. William Davis
41. Martin Weiner
42. Hoosain M. Dharmasey
43. Daniel King
44. Ruth Carlstrom
45. Garsen Heller
46. Aaron Hirsch
47. Irving Lesser
48. Ira Glotzer
50. Otto Kriske
51. John Ornstein
52. Richard Garsen Heller
53. Samuel Schattner
54. James Hudson
55. Katsu Nitta
56. Arnold Herman
57. Norman Silver

58. Benjamin Zimmerman
59. Alan Umbogy
60. Fred DeClara
61. Edward Krolian
62. Paul Papalias
63. Thomas DeLuca
64. Gerard Brown
65. Jose Pelayo
66. Howard S. Howard
67. Richard Goeltz
68. Alan Locker
69. Michael Beshella
70. Karnig Krolian
71. Bruce Zins
72. George Lewson
73. Carl Madonick



SCHEDULE D

Witnesses For Defendants:

1. Lois Cleland
2. Peter Landau
3. Marsha Eilenberg
4. Linda Levy
5. Susan Randal
6. Sydney Kaplan
7. George Leide
8. Robert Scheinman
9. James Barron
10. David Butowsky
11. Thomas Schwenke
12. Michael Devine
13. D.T.O'Brien
14. William Bennett

in 45 minutes?

MR. DEVINE: We will try the best we can, both because of your own schedule and Mr. Davis' We told him that we would try and do that. I have a limited examination. I hope we can make it.

THE COURT: Otherwise there is no purpose that will be served because he will have to be back here tomorrow.

MR. DEVINE: I understand that.

THE COURT: If you are not finished with him, Mr. Walker has to finish with him.

(Witness Cary temporarily excused.)

MR. DEVINE: Plaintiff calls William H. Davis.  
W I L L I A M     H .     D A V I S ,     called as a witness  
for and on behalf of the plaintiff, having been first  
duly sworn, testified as follows:

MR. DEVINE: Your Honor, I know this is unusual to ask this of my own witness but could we exclude Mr. Cary during Mr. Davis' direct testimony?

MR. WALKER: I think this is a public trial, if Your Honor please. We are not talking about sequestering witnesses?

THE COURT: He has a right to ask that fact witnesses be excused.

MR. WALKER: I would object to it. It is unusual

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krs

Davis-direct

49

for one to excuse one's own witness. I would anyway object to that.

Are you requiring the witness --

MR. DEVINE: I am asking that he be excused.

THE COURT: And I am going to allow him to exclude him.

It is up to you, of course, but my suggestion is since it is close to 5 o'clock, you are free to leave, as long as you are back here tomorrow morning since we will not have you testify again. But you will have to leave the room.

DIRECT EXAMINATION

BY MR. DEVINE:

Q Could we have your present address.

A 65 West Brother Drive, Greenwich, Connecticut.

Q The gentleman who just left the room is Mr. Cary, who was testifying before you took the stand. Have you ever seen that gentleman before?

A No.

Q To the best of your recollection, have you ever talked to that man?

A No.

Q Do you know an Akiyoshi Yamata?

A I do.



1 krs  
2 Q When did you first speak to him, to the best of  
3 your recollection.

4 A It was either 1969 or '70 at the inception of  
5 his Takara Partners. I met him at the Sky Club with Mr.  
6 John Burns, who introduced me to him and said he was begin-  
7 ing a new firm.

8 MR. WALKER: I will object to that. The witness  
9 answered.

10 THE COURT: You can't tell us what somebody  
11 else said to you, Mr. Davis. Just tell us what you know  
12 and saw and did.

13 Q Did you ever enter into any business dealings  
14 with Mr. Yamata?

15 A Could you clarify the question?

16 Q Did you ever have any business relationship  
17 with Mr. Yamata?

18 A Yes. I became, after being introduced to him,  
19 a member of his Fund, Takara Partners. He was the general  
20 partner and I, along with some others, became a limited  
21 partner.

22 Q What was the business of Takara Partners, as  
23 you understood it?

24 A It was supposed to be a hedge fund..

25 Q What did you understand at that time a hedge fund

2 to be?

3 A A fund that bought long and bought short.

4 Q In other words, it was an investment vehicle?

5 A That is correct.

6 Q Do you recall how much you invested in Takara  
7 Partners?

8 A One hundred thousand.

9 Q When did you make that investment?

10 A Whatever the year was the fund began. It was  
11 either mid-'69 or '70. I don't recall.

12 Q And I think you testified that the nature of  
13 that investment was a limited partnership investment?

14 A Yes.

15 Q Did you ever maintain an account with a regis-  
16 tered representative by the name of Engelback, a brokerage  
17 account?

18 A I think the firm that you are referring to is --  
19 I brought along some transaction slips, as you requested  
20 by telephone. Peter Engelbach was a stock broker working  
21 for another firm, yes. It wasn't his firm.

22 Q Was it Newburger & Company that he worked for  
23 at one time?

24 A I guess it was, yes.

25 Q To the best of your knowledge, did he work for

any other firms at any other times?

A Yes, he did.

Q Do you recall the names of any of those other firms?

A Not without reference to some slips here.

Q So we can try and do this clearly on the record, would you hand to me the slip which you feel might refresh your recollection in that respect, so I can ask the clerk to mark it before we testify about it.

A Here are a couple of slips. These are both from Newburger and there is one here through Woodcock, Cummings, Taylor & French.

MR. DEVINE: Let me mark these, please.

I would ask as Plaintiff's 4 for identification, we mark a two-page document which appears to be a brokerage confirmation.

(Plaintiff's Exhibit 4 marked for identification.)

MR. DEVINE: I would ask as Plaintiff's Exhibit 5 for identification, that we have a three-page document, which also appears to be a brokerage confirmation.

(Plaintiff's Exhibit 5 marked for identification.)

MR. DEVINE: I offer these.

MR. WALKER: I have no objection to these if they are used to refresh the witness' testimony, but I don't



1 see any relevance here.

2  
3 THE COURT: I agree. All you want them for  
4 is to ascertain what other firms this individual worked  
5 for so he has refreshed his recollection?

6 MR. DEVINE: I do not want to offer them generally,  
7 but we will take it step by step.

8 Q I show you Plaintiff's Exhibits 4 and 5 for  
9 identification and ask if that refreshes your recollection  
10 as to the two firms for which Mr. Engelbach worked at  
11 different time when he was managing your account?

12 A I am sorry, would you repeat that?

13 Q Looking at Plaintiff's 4 and 5 for identification,  
14 can you tell us the names of the two firms for which Mr.  
15 Engelbach worked when he handled your account?

16 A Yes. It is clear that one of them was Newburger  
17 & Company. Apparently a division of Advest. The other --  
18 it is Called Newburger & Company Division. The other, at  
19 the time of the purchase of the stock, he was working for  
20 Woodcock, Cummings, Taylor & French. And then this stock  
21 was sold through Newburger, which was the firm he was at.

22 Q Do you recall how it was that you came to have  
23 an account at Woodcock, Cummings and at Newburger & Company?

24 A Yes, vividly.

25 Q Will you tell us how that came about?

2 A As a partner in Takara Partners during a period  
3 when, according to all our reports, that Takara was sending  
4 its partners the assets -- the assets of the company was  
5 improving, I was interested, as a partner, in where the  
6 general partner was investing our funds, because it was  
7 performing well. I called Mr. Yamata on the telephone and  
8 said that "I don't seem to be having the kind of luck in  
9 investing my money that you are in investing the Partners  
10 money. Where are you putting the Partners money?"

11 And he asked me what some of my holdings were,  
12 and I told him. And he said, "I could understand that."  
13 He said, "To sit here on the phone and try to give you a lot  
14 of advice might take more time than I have right now, but  
15 I will be glad to try to help you out. As a matter of  
16 fact, I will make you a proposition. I am awfully busy,  
17 but if you will give me some money to invest, I will put  
18 it into some of the same stocks and securities that Takara  
19 is putting its money in."

20 And I said, "What are they?" And he said, "I  
21 would prefer, because I am very busy, to have you give me,"  
22 in essence, "a discretionary account at a brokerage firm  
23 that I designate, and you will see by the slips what they  
24 are, and you could discontinue it any time you want to."

25 He said, "What I would like to have you do is

1 krs  
2 this -- " I think the figure was \$50,000. He said, "Give  
3 me \$50,000." He said, "Give me \$50,000, and if I double  
4 this, I would like a gentleman's agreement with you that  
5 you will then take the double amount, \$100,000, and buy  
6 another unit in Takara Partners."

7 And I said, "That seems like a very square prop-  
8 osition and I will do that," knowing that I could remove  
9 it at any time I wanted to.

10 I established this account at one of these firms,  
11 which ever it was at that time, as indicated. And I would  
12 have occasional telephone conversations with this fellow,  
13 Bert Engelbach, who said, I'm buying such and such for you  
14 at the suggestion of Aki, so on and so forth. And that was  
15 the kind of relationship I had. I would see these slips,  
16 and eventually the amount built up to, let's say, 57,000.  
17 These figures are ball-park figures.

18 And Aki called up and said, "Bill, I want to  
19 ask a favor of you. I think I have done a good job for you  
20 in Takara, and here I have built some of your assets for  
21 you. We have made some money during a down market. It  
22 is too much for me to handle. I am managing too many things.  
23 I would like to ask you if you would be interested in taking  
24 \$50,000 out, putting it in another fund I am establishing  
25 for some other people who have asked me to help them out.



And we will call that fund, Seijo Associates."

I agreed to do that, and withdrew most of my funds from which ever firm here Mr. Engelbach was working for.

So my relationship with Peter Engelbach was a very elemental phone relationship with whatever company he was working with. He had changed on a couple of occasions.

Q Was it Mr. Yamata who designated Mr. Engelbach as the person to whom, or with whom, you were to open the account?

MR. WALKER: Objection.

THE COURT: Objection sustained.

Q Did there ever come a time when Mr. Yamata indicated to you anything with respect to where you should open brokerage accounts?

MR. WALKER: Objection. I think we have been through that. We are compounding hearsay.

THE COURT: The problem has been, so much of Mr. Davis' testimony has been hearsay, so the objection is sustained.

MR. DEVINE: I would point out that it is the position of the plaintiff that throughout this time period, when Mr. Yamata was making these arrangements, he was

1 actively engaged in an illegal activity and that, therefore,  
2 these statements which he made to Mr. Davis and other people  
3 of similar kinds were very clearly admissions against  
4 interest. And I think if the basis of the objection and the  
5 sustaining of the objection is the hearsay rule, that I  
6 think, not only under the liberality of the new federal  
7 rules of evidence but under traditional rules dealing with  
8 admissions against interest, it is admissible.  
9

10 THE COURT: The new rules, as you know, are two  
11 months away.

12 MR. DEVINE: I think they are being followed  
13 generally in the courthouse and I ask you to consider them  
14 with respect to this matter.

15 THE COURT: What relationship does Mr. Yamata  
16 have to this case?

17 MR. DEVINE: His activities will be connected.

18 THE COURT: Is he a defendant in this case?

19 MR. DEVINE: Not in this case, but he is a  
20 central figure in the fraud.

21 THE COURT: Is he going to be brought here?

22 MR. DEVINE: We have a process server looking  
23 for him.

24 THE COURT: Mr. Walker isn't going to be able to  
25 query Mr. Davis on that, and Mr. Yamata is not here, and

1 I don't think it is appropriate, which is the very basis  
2 of the hearsay rule. The objection is sustained.  
3

4 Q When you opened a brokerage account at Woodcock,  
5 Cummings, et cetera, was it your own volitional act that  
6 led you to select that brokerage?

7 MR. WALKER: Objection.

8 THE COURT: You could answer the question

9 A I never heard of it before until Mr. Yamata  
10 recommended it.

11 THE COURT: Mr. Davis, the point is that we have  
12 just had a long discussion about the fact that you can't  
13 testify in this courthouse at the present time about things  
14 that Mr. Yamata told you in conversations. I want you to  
15 adhere to that.

16 THE WITNESS: Your Honor, I don't understand  
17 what a hearsay rule is. I have never been a witness bef .e.

18 THE COURT: But you do understand we have been  
19 talking about that the issue has been your testimony about  
20 your conversation with Mr. Yamata, and you can't tell us  
21 about that. You could answer the question yes or no but  
22 what about Mr. Yamata told you isn't admissible.

23 MR. DEVINE: May I point out that the question  
24 that is really before the Court at this time is whether  
25 Mr. Yamata designated the account.



That does not call for an out-of-court statement. It calls for the witness' recollection and knowledge with respect to whether or not some events occurred which caused him to select a particular brokerage house for a reason other than his own independent judgment. It does not call for an out-of-court statement and I think this is just a tactic by the defendant to try to keep out what is an obvious fact here.

THE WITNESS: Your Honor, may I ask a question?

THE COURT: I don't think so, Mr. Davis.

Let's proceed.

Q Mr. Davis, did there ever come a time when you purchased any stock of Fire Fly Enterprises?

A Yes.

Q Do you recall when you first made such a purchase?

A Yes.

THE WITNESS: May I refer to these?

THE COURT: Yes.

Q You are referring to Plaintiff's Exhibit 4 for identification?

A Yes. I have two transactions here. I purchased some on February 2, 1971.

Q From whom or in what brokerage account did you make that purchase?

A Woodcock, Cummings.

Q Did you have any conversations which you can now recall with Mr. Engelbach with respect to that purchase?

A I do not recall.

Q Do you have any recollection of any other purchases?

A There were a series of transactions. I did not bring the slips and I do not recall, therefore, the names of these little-known companies at the time.

Q I am referring now only to Fire Fly Enterprises. You told us about a February purchase. Do you recall whether you made a purchase in January of Fire Fly Enterprises?

A Yes. January 6, 1971 was the earlier purchase.

Q Do you recall in what brokerage account that purchase was made?

A Well, I have here a slip that says it is Chartered New England, Dreyfus & Company in New York.

Q Do you recall ever having an account at Chartered New England Corp.?

A I know I never did have an account there, to my knowledge.

Q And the slip to which you refer is the second page of Plaintiff's Exhibit 4 for identification; is that right?

1           A       Yes, that is correct.

2           Q       Did there come a time when you received that  
3           slip?

4           A       I have it marked here January 11, 1971 with a  
5           date stamp, so I must have received it then.

6           Q       Did you make payment for that stock after you  
7           received that slip?

8           A       All my payments and billings were billed through  
9           whoever the broker was at the time and I do not recall the  
10          details of how I paid for the stock.

11          Q       With reference --

12          A       In the normal way, the stock is paid for  
13          whenever it was at the time.

14          Q       With reference to the Fire Fly Enterprises stock  
15          which you purchased through Chartered New England Corp.,  
16          did there come a time when you sold that stock?

17          A       Yes.

18          Q       When was that?

19          A       That stock appears to have been sold on 6/21/71.  
20          I actually believe that these may be attached improperly  
21          because I think you sell the first one if you buy stock in  
22          a company. You sell the first stock you buy, not the second.  
23          But the two purchases were to the companies I named and the  
24          two sales were to the other two companies I have named.  
25



Q You testified about two purchases?

A Correct.

Q Did there come a time when you sold all of the stock that you had purchased in those two purchases?

A It appears so, yes.

Q Did you make those sales in two separate transactions?

A Yes.

Q Were both of those sales made through your account at Newburger & Company?

A Yes.

Q Did there come a time when you received from Newburger & Company a confirmation slip with respect to both of those sales?

A Yes.

Q Are those confirmation slips part of Plaintiffs' Exhibits 4 and 5 for identification?

A Apparently, yes.

Q With respect to Plaintiffs' 4 and 5 for identification,, are all of the documents in those two exhibits documents which you received in the mail at the address indicated on the document?

A Yes.

MR. DEVINE: I offer Plaintiffs' Exhibits 4 and

Q Do you recall how much money you invested  
in Seijo Assocs.?

A Yes, \$50,000.

Q Again, was this an investment partnership?

A Yes.

Q Was Mr. Yamata the general partner of that  
investment partnership?

A Yes.

Q Did you purchase a limited partnership interest?

A Yes.

MR. DEVINE: No further questions.

CROSS-EXAMINATION

BY MR. WALKER:

Q Mr. Davis, you brought with you to court several  
other documents, including -- other than the exhibits  
marked 4 and 5, in connection with your appearance here  
to day?

A I didn't.

Q Perhaps I am wrong, but I thought when you were  
trying to refresh your memory from dates you brought out  
an envelope --

A That was just some reading material in case I  
had some reading time available.

Q Did you bring with you any other papers that

1 have any bearing, or any notations at all concerning any  
2 of your dealings with any of your stock investments with  
3 Yama'a, Seijo, Takara, Fire Fly, Woodcock, Advest?  
4

5 A I did not.

6 Q Do you have any, sir?

7 A Not with me.

8 Q Do you have any such at home?

9 A Reams and volumes.

10 Q With reference to Fire Fly, sir, do you have any --

11 A That is all I have.

12 Q Mr. Davis, without getting into your financial  
13 details at all, do I take it from the size of your investments  
14 in Takara and also in Seijo that you are a man of means?

15 A I was.

16 Q At that time, though, those investments appeared  
17 to be appropriate to your financial status?

18 A Yes.

19 Q The type of investment that you were making at  
20 ~~that time~~ would it be fair to say that you were a man of  
21 some sophistication as far as investments in the market  
22 is concerned?

23 A It would not be.

24 Q Would you tell us briefly what your background  
25 is with regard to investing in the stock market.



1  
2 A I am in the publishing business. I had sold  
3 our business and had some -- it was bought by another company.  
4 We are now a division of that company and I was running that  
5 business, the other business, and had some money to invest  
6 of this quantity, first in my life, really.

7 Q You had become acquainted with Mr. Yamata back  
8 in 1969?

9 A As earlier indicated, that is correct.

10 Q And as a result of that, you became a limited  
11 partner with a great number of other people in Takara Partners?

12 A Yes.

13 Q Including, I think, Keith Funston, who had been  
14 past president of the stock exchange?

15 A Yes.

16 Q He was a fellow limited partner of yours?

17 A Correct.

18 Q What did you know of Yamata's reputation at that  
19 time?

20 A Nothing. The man who introduced me to him was  
21 a man of great substance, and the other were people of  
22 substance, so I presumed that they had selected the proper  
23 kind of person and fund.

24 Q At the time you entered any of these partner-  
25 ships, you believed he was a man of substance and integrity?

A No reason to believe otherwise. We had had nothing but favorable financial reports, which later proved to be fraudulent.

Q You made the first inquiry of Yamata for some advice on your own personal investments, outside the partnership?

A Yes.

Q And it was in response to that that he suggested, or that the Woodcock firm and Mr. Engelbach's name was brought to your attention?

A That is correct.

Q So it was initially your looking for some advice and this was in response to your inquiry?

A Yes.

Q As a result of that, you opened up an account at Woodcock, Taylor, did you not?

A Correct.

Q There was no duress or no pressure put upon you to do so, was there, at that time?

A That was the place that Aki said that he would like to write this business through.

Q As far as any pressure was concerned --

A I would not call it pressure, no.

Q And you said from time to time you talked with

Mr. Engelbach over the phone; is that correct?

A That would be correct.

Q Was the usual substance of the conversation, as I recall, that he would say that Aki recommends you buy or sell something?

A I think so. It is all very vague.

Q In other words, he checked with you?

A It was a cursory kind of relationship.

Q And that is what you were looking for, was what Yamata was recommending?

A Yes.

Q At the time of these transactions, there would be a call from Engelbach saying that Aki recommends this and then the order would be placed after discussion with you; is that correct?

A Yes.

Q And you bought the security known as Fire Fly Enterprises through the firm of Woodcock, Taylor, rather than Newburger?

A Whatever it says there.

Q And you also bought some through another -- at least you have a slip apparently made out to you that you bought some other stock of Fire Fly through Chartered New England?



1 A That was sent to me. That is a mysterious thing.  
2  
3 I don't know where that came from.

4 Q But you did receive it?

5 A Yes.

6 Q And it says "prospectus enclosed." I take it  
7 you received a prospectus for Fire Fly at that time from  
8 Chartered New England?

9 A Apparently.

10 Q Now, sir, am I reading these right?. Was the  
11 trade date on one block of Fire Fly April 2, 1971?

12 A Yes.

13 Q And the second was 500 on June 14, 1971?

14 A That is when they were sold. That is correct.

15 Q And the price you got in June 14, 1971 was  
16 4 and 3/8 dollars a share?

17 A Right.

18 Q Whereas in April you received \$4 and 1/2?

19 A That is correct.

20 Q Did you ever have any conversation with anybody  
21 else at the Newburger Division of Advest other than Mr.  
22 Engelbach?

23 A Not to my recollection.

24 Q To the best of your recollection?

25 A No.

Q As far as you were concerned, Mr. Davis, would it be true to say that every transaction that you talked about today, there was no reason for you to think and you did not think at any time, that there was anything improper or illegal about any of this?

A That is right.

Q At no time did you have any understanding that any sort of performance was going to be guaranteed on any of these transactions?

MR. DEVINE: Objections. I don't understand that question, Your Honor.

THE COURT: I think the question is reasonably clear.

Do you understand the question?

THE WITNESS: I understand what he is getting at. The word "guarantee," I would have to say no.

Q You bought these stocks hoping that the market would increase appreciably?

A Yes.

Q And you knew that there was some degree of risk involved in them; isn't that right?

A Yes, of course, there always is.

Q And it was a risk that you accepted at that time?

A Correct.

2 Q Did you ever ask him about it?

3 A No.

4 MR. DEVINE: No further questions.

5 MR. WALKER: Nothing further.

6 THE COURT: Thank you.

7 (Witness excused.)

8 MR. DEVINE: Mr. Engelbach.

9 P E T E R E N G E L B A C H , called as a witness  
10 on behalf of the plaintiff, being first duly sworn,  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DEVINE:

14 Q Are you presently employed, Mr. Engelbach?

15 A Yes.

16 Q By whom are you employed?

17 A Thomson & McKinnon, Auchincloss, Kohlmeyer, Inc.

18 Q What capacity are you employed?

19 A Stock broker.

20 Q Were you employed by Woodcock, Cummings, Taylor  
21 & French?

22 A Yes.

23 Q When did you begin that employment?

24 A I believe it was June of 1970.

25 Q What capacity were you employed at that time?



A Stock broker.

Q When did you end your employment with Woodcock, Cummings, Taylor & French?

A March of '71, I believe, or thereabouts.

Q During your employment by Woodcock, Cummings, was there any change in your capacity there?

A No.

Q In March of 1971, after leaving Woodcock, Cummings, did you immediately undertake another employment?

A Yes.

Q Where was that?

A Newburger & Company, Division of Advest.

Q When we speak of Newburger & Company or Advest, are we talking about the same company?

A Yes.

Q And you began with that company in March of 1971?

A That is correct.

Q What capacity did you begin at that company?

A As a stock broker.

Q When did you end your employment at Advest?

A June of the same year.

Q June of 1971?

A Yes.

Q During your three months with the company, was

there any change in your capacity?

A No.

Q Do you know Akiyoshi Yamata?

A Yes.

Q When did you first meet him?

A 1965.

Q How did it come about that you met him at that time?

A I was employed at that time at Kuhn, Loeb & Company, in New York. He had come in between semesters from the Harvard Business School to work at Kuhn, Loeb. I met him at Kuhn, Loeb in the early part of the summer of 1965 and we had remained friends up until May of '71.

Q Did there come a time when Mr. Yamata became portfolio manager for Competitive Assocs.?

A Are you asking me?

Q Yes.

A Yes. He was a portfolio manager for Competitive.

Q Do you recall when he undertook that position?

MR. WALKER: I would object, Your Honor. I think it calls for hearsay. The information, I think, is in documents that have been scheduled and to which I have no objection being admitted for this purpose.

MR. DEVINE: I am not asking for an out-of-court

statement. I am just asking if he knows when Mr. Yamata became the portfolio manager.

THE COURT: The point is that Mr. Walker says, possibly and probably the only reason he knows is by virtue of what someone else told him, and he is objecting on the grounds of hearsay. And he says it is not necessary because the documents in evidence indicate when he became portfolio manager, so it is a waste of time. Objection sustained.

Q Did there come a time when Mr. Yamata told you that Competitive Assocs. was interested in buying a large block of Fire Fly Enterprises?

A Yes.

Q When was that.

A Either the day in which I sold the stock to Competitive or possibly a day or two before that time. The time, I don't recall the exact date. I believe it was some time in early April. You could look at the official tickets to see the day of the transaction.

MR. DEVINE: Your Honor, I would like to mark a confirmation from Newburger & Company. However, the only copy I have is not legible in full. I wonder if the defendant has a more legible copy we could mark? It is a confirmation on April 2, 1971, from Newburger & Company to



1 plaintiff.

2 I will as that my copy be marked as Plaintiff's  
3 Exhibit 8 for identification.

4 MR. WALKER: No objection to the full exhibit.

5 (Plaintiff's Exhibit 8 marked for identification.)

6 THE COURT: Can that exhibit be read?

7 MR. EVINE: I will hand it up, Your Honor.

8 This i received from the defendant.

9 THE COURT: It is difficult to decipher.

10 MR. WALKER: It is, Your Honor. Of course  
11 the plaintiff, I would think, would have the best copy of  
12 it, but this is merely a copy of the copy that we have.

13 A I presume I am holding this for some reason.

14 Q Do you have in front of you Plaintiff's Exhibit  
15 8 for identification?

16 A Yes.

17 Q There is a line drawn around this document, as  
18 sort of a boundary line or borderline; do you see that?

19 A Yes.

20 Q At the very top, just inside the borderline,  
21 can you read the entries across the top?

22 A I can make a fair guess as to what these things  
23 say only because of familiarity with this sort of piece of  
24 paper. For one thing, it says "you bought" with numbers  
25

1 underneath it. But I see the next block, which says "you  
2 sold," so the block next to the last has to be "you bought,"  
3 with a number in it which I can't figure it out. I can  
4 make a good guess.  
5

6 Q For the time being, does that document refresh  
7 your recollection as to when Mr. Yamata told you that  
8 Competitive Assocs. was interested in buying a large block  
9 of Fire Fly stock?

10 A No, because I can't read the date. The date  
11 could be 4/3/17. If that is correct, then that is what  
12 this thing says.

13 MR. WALKER: I think we can stipulate, to save  
14 time. I think it is April 2, 1971, if Mr. Devine would  
15 agree to that.

16 MR. DEVINE: I certainly would agree to that,  
17 but I think I can do better. We will get to these documents  
18 later, Judge, perhaps I could do it more smoothly.

19 Q On or about April 2, 1971, when Mr. Yamata made  
20 this statement to you, was that in person or in a telephone  
21 conversation?

22 A On the telephone.

23 Q Do you recall what Mr. Yamata said to you and  
24 what you said to him on that occasion?

25 A Yamata called me and said that he knew I had

1 a certain amount of stock, total amount I don't know if  
2 he knew at the time, of Fire Fly; that Competitive was  
3 interested in acquiring a rather large block of Fire Fly.  
4 Would my customers be interested in selling their stock  
5 at this time. My answer to that was, "I will check my  
6 customers," which I subsequently did. Most of them, I  
7 believe, in fact said go sell the stock. I then --

8 Q Let's take it one step at a time.

9 MR. WALKER: May he finish the answer to that  
10 conversation, because that was the question asked.

11 MR. DEVINE: You interrupted me. That was the  
12 question I was going to ask.

13 Q If you would, finish telling us the conversation  
14 with Mr. Yamata.

15 A Specifically, it was a short conversation. Again,  
16 nothing much more than, I know you have Fire Fly. "Com-  
17 petitive is interested in acquiring a large stock. Would  
18 your people be interested in selling?" My answer was, "I  
19 don't know. Let me check with them." I then subsequently  
20 checked with them and they said they would sell.

21 Q When you say you checked with them, are you  
22 now telling us that on the same day after talking with  
23 Mr. Yamata, you called certain customers?

24 A If it wasn't the same day, it was the following  
25



1 day, but I think for all events and purposes, the sequence  
2 was after speaking with Yamata, I got in touch with the  
3 customers. If there was a time lag of a day, so be it.  
4 I just don't remember now.  
5

6 Q Which customers of yours did you call, do you  
7 remember their names?

8 A No, I don't, but I think there are individual  
9 records showing who sold the stock. I would have contacted,  
10 obviously, all those who did sell the stock, and if there  
11 was anybody that had stock in possession and did not sell,  
12 I probably contacted those people and were told no, they  
13 didn't want to sell their stock at that time.

14 MR. DEVINE: I ask that a Zerox of what appear  
15 to be trade tickets, five pages, be marked Plaintiff's  
16 Exhibit 9 for identification.

17 (Plaintiff's Exhibit 9 marked for identification.)

18 MR. DEVINE: I offer Plaintiff's Exhibit 9 in  
19 evidence.

20 MR. WALKER: No objection.

21 (Plaintiff's Exhibit 9 received in evidence.)

22 Q Mr. Engelbach, I show you Plaintiff's Exhibit 9  
23 in evidence and ask you if this document refreshes your  
24 recollection as to which customers you called after speaking  
25 with Mr. Yamata.

Q Would you tell us the names of the customers, please.

A Alice Bergam; William Davis; Adele Kaufman; Philip Goldfine; Barry Leonard; Ann Grabarek; Edward Grabarek; Arthur Bellis; Hyman Escava; William Frankel; Dr. Emmanuel Tress; Ivan Popkin.

Q With respect to William Davis, do you recall your conversation with him?

A No.

Q Do you recall your conversation with --

A I could give you a general idea what I said. Specifically, I could not tell you at this date the exact words of the conversation.

Q Can you tell us your best recollection of the substance of the conversation with Mr. Davis?

A I am going to assume that my conversation with Davis was not much different than my conversation with other people who I called. Generally, I called him and told him that there was a purchaser around who was looking to acquire a large block of the Fire Fly stock and did they have any interest in selling. That was about it insofar as the conversation. Most of these people know specifically how I felt about gold stock, that I really was indifferent to them, so I didn't have to go into a long statement as to,

you ought to sell now because it is going one way or the other. It was just a point of, are you interested in selling, there was a buyer around.

As far as I know, all those I know sold. There may have been others who had the stock in possession and for some reason or another did not sell.

Q Would Jacob Blumenthal be one of those?

A His name wasn't on that list.

Q No.

A And he had the stock?

Q Yes.

A He didn't sell.

Q Did you speak to him after you spoke to Mr. Yamata?

A I am sure I did.

Q Was the substance of your conversation with Mr. Blumenthal the same as with the others?

A Yes.

Q You didn't mention anybody by the name of Shaw. I show you the second page of Plaintiff's Exhibit 9 and ask you whether you sold to any customer having the name of Shaw.

A Yes, I am sorry. It is on here. I just didn't read it.



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Q What is the first name of that customer?

A It could be Rose or it could be Jack. I don't know.

Q You don't recall who you spoke to?

A I don't know who was the owner of the stock. They are husband and wife and I don't know if it was Rose Shaw who was the owner or Jack Shaw who was the owner, and since there is no first name here, I don't know who it was.

Q In your conversations with these customers after speaking to Mr. Yamata, did you mention the name Yamata?

A I might have. It is possible. I don't believe I might have said, Yamata said you ought to sell the stock. I don't recall the specific conversation. I indicated what I thought might have transpired in the conversation.

Q With respect to William Davis, did you inform him of Mr. Yamata's view with respect to whether or not he should sell Fire Fly at that time?

A I could very well have. I don't know that I did or didn't

Q With respect Mr. or Mrs. Shaw, did you inform them of Mr. Yamata's view at that time?

A I might have. I just don't recall.

Q Would the same be true of Mr. Blumenthal?

A Yes, that would be true.

Q Not to belabor this point, but have we exhausted your recollection of what the substance of your conversation were with your customers on that occasion?

A Yes. I can't remember anything specific that I could quote to you how the conversation went.

Q On that same day, or in that two-day period, did you have a conversation with Mr. Switsky?

A Yes.

Q Did that conversation concern Fire Fly or Competitive Assocs.?

A There were probably a number of conversations with Sam Switsky. Are you asking, did I have a specific conversation with him or are you asking did I just have general conversations with him?

Q Let me rephrase it. On April 2 or April 1st of 1971, did you have any conversation with Mr. Switsky which in any way related to Fire Fly Enterprises or Competitive Assocs.?

A Yes.

Q Do you recall on which day that conversation took place?

A No, I don't.

Q Do you recall whether that conversation preceded or followed your conversation with Mr. Yamata?

1 krs  
2 A It would have come after the conversation with  
3 Yamata. There would have been no reason for me to talk to  
4 him about Competitive before the conversation with Yamata,

5 Q Do you recall whether your conversation with  
6 Mr. Switsky preceded or followed your conversations with  
7 these customers that you described?

8 A No, I don't. I don't know. My guess is,  
9 probably afterwards, because if everyone said they didn't  
10 want to sell, there would be no reason to have a conversation  
11 with Switsky about Competitive buying.

12 Q What was said in your conversation with Mr.  
13 Switsky and by whom.

14 A I was a new salesman --

15 Q I don't want to interrupt you but I will because  
16 what we want is your best recollection of what was said.

17 A I wanted to put the sequence in the correct  
18 frame as I think it happened. My conversation with Switsky  
19 probably did not take place until after I got an order from  
20 Competitive that they in fact were interested in buying stock.  
21 At that point in time, I would then go to Switzky and say  
22 that I have an order from Competitive to buy Fire Fly, that  
23 I have so many shares in possession of that that these  
24 people want to sell. I have this much to be able to offer  
25 to Competitive. Do I have your approval to do the trade?



And at that point he would do whatever necessary that he had to do to make a decision whether he could in fact do the trade.

Q Did he tell you whether or not you could?

A Obviously the trade was done, so he did say he could do the trade.

Q I think you just mentioned the conversation --

THE COURT: By the way, what is the position of the man we are talking about? I am supposed to be trying to understand what is going on and I have no idea who Mr. Switsky is. First, I thought he had something to do with Competitive, but from that answer, I understand he has something to do with Advest.

Q Who was Mr. Switsky?

A Sam Switsky was the sales manager in the fellow office of Advest.

Q I think you mentioned a conversation in the same time period with someone at Competitive Assocs.; is that correct?

A That is correct.

Q With whom did that conversation take place?

A By name? I don't remember. By occupation, it was the trader at Competitive who would be, as far as I know, the only person who could give me an order to buy

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or sell. He was the only person I was aware of that was authorized to trade for the account of Competitive.

Q Where was that person physically located?

A In California.

Q Did you call him or did he call you?

A I don't really remember. I think, though, that he called me.

Q In relationship to the conversation with Mr. Yamata, the conversation with your customers and the conversation with Mr. Switsky, where does the conversation with the trader for Competitive Assocs. fit, chronologically?

A The conversation with Yamata first. Conversations with my customers second. A conversation with Yamata again, telling him I had available for sale so many shares of stock. A conversation with the trader at Competitive, saying I had so many shares for sale. A conversation then with Switsky afterwards to see that I had customers who wanted to sell; Competitive wanted to buy and I wanted to do the trade. That would be the sequence of events.

Q Let's focus on your conversation with the trader at Competitive Assocs. in California. You don't recall his name?

A I don't, no.

Q Do you recall what was said in that conversation



and by who?

A I don't remember if he said to me, I understand -- he would say to me, I understand you have stock for sale in Fire Fly. My answer to him, Yes, I do. I have so many shares of Fire Fly for sale. He said he would buy that and the price was established by whatever the price was on the open market at the time.

Q Did he tell you how he understood that you had stock available?

A No, there was no reason to. I knew that Yamata was the adviser to Competitive. The only reason that the trader, Competitive, would know I had stock was because he spoke to Yamata and Yamata had told him to call me because I had stock available.

Q And your best recollection is the trader called you rather than the other way around?

A I think so, yes.

Q As I understand the chronology, prior to receiving the call from the trader, you made a call to Mr. Yamata, which was your second conversation with him?

A That is correct.

Q In this series of conversations?

A That is correct.

Q Did you place that call to Mr. Yamata?



2 A I would have thought yes. He would not know when  
3 I would have contacted my customers and when to get back to me.  
4 In all likelihood, I probably called him and told him I  
5 I had so many shares for sale.

6 Q Do you recall where you called him, where,  
7 physically, he was when you called him?

8 A Specifically, no, but I would imagine in his  
9 office.

10 Q Will you tell us, as well as you can recall,  
11 precisely what you said to Mr. Yamata and what he said to  
12 you in this conversation you have described.

13 A Basically, that I had so many shares of the  
14 stock for sale, the possession I had and so much was for  
15 sale and the price was whatever the market was at the time.

16 Q Did you tell him what your conversation with  
17 your customers was?

18 A No. Obviously, there would be no need to.  
19 Obviously, when I had my first conversation, I told him I  
20 had to call them to find out whether they would sell. Beyond  
21 that, I am not sure whether I would have indicated any  
22 specific conversation.

23 Q Did you discuss with Mr. Yamata whether you  
24 should then call Competitive Assocs. or whether you should  
25 wait for a call? Was that discussed?

1 krs  
2 A I don't recall. He may have said to me, "All right,  
3 I will have the trader call you," which is probably what in  
4 fact did happen.

5 Q Getting back for a moment to your conversation  
6 with the trader at Competitive Assocs., will you make sure  
7 that we now have on the record the complete conversation?  
8 As I understand it, he called you, saying that he understood  
9 that there was some Fire Fly stock available. You then  
10 responded. Will you tell us your response and if he said  
11 anything after that?

12 A My response is, Yes. I have so many shares for  
13 sale. Are you interested in buying this at this price. And  
14 his answer was probably yes; and I said, All right, I will  
15 get back to you to confirm the trade, which at that time I  
16 did not have authorization to do the trade.

17 Q The next event, as I understand the chronology,  
18 was your conversation with Mr. Switsky?

19 A Correct.

20 Q Following your conversation with Mr. Switsky,  
21 did you speak again on this subject with the trader at  
22 Competitive Assocs. or Mr. Yamata?

23 A Probably to Yamata to tell him that the trade  
24 was done. A subsequent conversation with the trader, but  
25 I don't know because at that point, after I went to Switsky,



1 I know that certain things took place. He called in one of  
2 the partner, Alan Weintraub. They had a discussion about  
3 doing the trade. Alan Weintraub in fact wound up calling  
4 Competitive to find out whether the man who in fact gave me  
5 the order was authorized to do so and that they were in  
6 fact looking for the stock at that time. After Alan Weintraub's  
7 conversation, I don't know whether Alan said to them at  
8 that time, All right, fine, we are going to do the trade,  
9 or I called back and said, Fine, we are going to do the  
10 trade. I can't recall specifically that there was a con-  
11 versation after that time with the traders.  
12

13 Q Did there come a time on this day, April 2, 1971,  
14 when you prepared the order ticket, which is the first  
15 ticket on the first page of Plaintiff's Exhibit 9?

16 A Yes, I obviously had to write up the ticket,  
17 saying Competitive Assocs. was in fact buying 4350 shares  
18 of Fire Fly Enterprises at a price of 6 and 3/4's.

19 Q Do you recall when in the chronology you have  
20 described you physically prepared that order ticket?

21 A I am sure that I took all the tickets, the buy and  
22 sell, to Switsky, so it would be after my conversation with  
23 the fund that they in fact wanted to buy, what price, and  
24 I took the tickets to Switsky for his approval to do the  
25 trade.



MR. DEVINE: Your Honor I am told that Mr. Zins is in the courtroom and I would like to try to consummate him. I think we have only a few minutes of testimony, identifying some documents for him. Maybe we could consummate him by putting him on in the middle of Mr. Engelbach's testimony, if that is all right with you?

MR. WALKER: As I understand it, Your Honor, Mr. Zins is local and Mr. Engelbach --

THE COURT: I understand Mr. Engelbach is from Philadelphia. I think we should get finished with Mr. Engelbach, then we will take Mr. Zins, and if we go past 1 o'clock, we will consummate him to do it.

MR. DEVINE: All right.

THE COURT: With that, we might as well take our ten-minute morning break.

(Recess.)

THE COURT: Proceed, Mr. Devine.

BY MR. DEVINE:

Q Mr. Engelbach, to try and conclude with the events of April 2, 1971, relating to Competitive Assocs. and Fire Fly Enterprises, have we covered all of the conversations that you recall on that day relating to that subject?

A I believe so.

Q Your last conversation with Mr. Yamata on that

day would be the third conversation with him in this series of conversations. Do I understand correctly that you don't have any specific recollection of the substance of that conversation or, indeed, that there was such a third conversation?

A That is correct.

Q On April 2, 1971, did you open a new account at Advest for Competitive Assocs.?

A I believe I did, yes. I opened up an account for them. Since this was the first trade, I imagine, that was the day I opened up the account.

MR. DEVINE: May I have this new account form marked?

(Plaintiff's Exhibit 10 marked for identification.)

MR. DEVINE: I offer this in evidence.

MR. WALKER: No objection.

(Plaintiff's Exhibit 10 received in evidence.)

Q I show you Plaintiff's Exhibit 10, Mr. Engelbach, and ask you if this is a copy of the new account form which was prepared at your direction on or about April 2, 1971, with respect to Competitive Assocs.

A Yes, this is my handwriting.

Q On April 2 or April 1st or the 3rd, in this basic time period of three or four days, did you make any



inquiry as to what Competitive Assocs. was?

A No.

Q Did you have any knowledge at that time as to what Competitive Assocs. was?

A Yes.

Q What was the basis for that knowledge? What was the sources of your knowledge?

A The fact that I knew that Yamata was a portfolio manager, that he informed me of this when he was made a portfolio manager; that I had previously done business with Competitive Assocs. That about covers the whole area.

Q Did understand you to say that you had previously done business with Competitive Assocs.?

A Yes.

Q When first did you do business with Competitive Assocs.?

A When I was at Woodcock, Cummings, Taylor & French, whatever the name of it was at that time. It would be before I came to Advest. The specific date, I just can't pull it out of the air for you.

Q What was the nature of that business that you did with Competitive Assocs. while you were at Woodcock?

A I did several trades, only one of which stands out in my mind now, and that was selling or buying, I don't



really remember, some telephone warrants.

Q You mean A T & T?

A A T & T warrants, which traded on the New York Stock Exchange.

Q Was that transaction done at the direction of Mr. Yamata?

A Yamata could not direct me to do any trades for the fund. Did he initiate it?

Q Yes.

A He would have had to. Although that may not be true because at the time that Yamata became a portfolio manager for Competitive, he sent a letter to Competitive saying that these people are people which he had worked with in the past, had been useful in providing him with research information, or other type of information. In my particular case, it was the easy access of having him call me to get quotes, because at this time it was almost impossible to get over-the-counter quotes. And a lot of the securities Mr. Yamata was dealing with were over-the-counter stocks; and the market was so volatile, he would want to know on an hourly basis what was happening. Since I was close to the over-the-counter trading desk, I was able to facilitate his ability to guess quotes for a number of these stocks, or providing him with other sort of research information that

I had available to me.

He sent a letter to Competitive saying that I -- there must have been 20 other names on this letter -- had been useful to him, and if these people wanted to get in touch with me directly, I was put on notice that they might, that business should be directed to us where they can and for whatever reasons that they deem proper. Although I think in actual fact, most of the business, and I would say all the business that I did for Competitive, was initiated by Yamata, but I don't know that to be absolutely 100 percent correct.

Q With one exception of the transaction in A T & T warrants, do you recall any other transactions with Competitive Assocs. prior to joining Advest?

A No.

Q The first transaction at Advest was the Fire Fly Enterprises transaction that you have been testifying about; is that correct?

A Correct.

Q In again the same time period is the beginning of April 1971, without reference to when you learned it or how you learned it, were you aware of the investment goals of Competitive Assocs.?

A I would say yes, I was aware of it.



2 Q What is your recollection of what the investment  
3 goals of Competitive Assocs. was at that time?

4 A An aggressively managed portfolio for capital  
5 appreciation.

6 Q Were you aware of any investment restrictions  
7 that pertain to that portfolio, namely, competitive Assocs.?

8 A No.

9 Q Did you make any inquiry to learn whether or not  
10 there were any investment restrictions?

11 A I don't think that was my position.

12 Q Whether it was or wasn't, I am asking you whether  
13 you made any inquiry?

14 A No, I don't think I would have specifically  
15 have asked that question.

16 Q Still with reference to the April 1971 time  
17 period, did you at that time know the portfolio composition  
18 of Competitive Assocs.?

19 A No.

20 Q Did you make any inquiry of Mr. Yamata or anyone  
21 else as to the protfolio composition at that time?

22 A No, nor should I have, because that was a very  
23 jealously guarded secret until the quarterly reports come out.

24 Q Were you refused that information by anyone?

25 MR. WALKER: Object. I think we are going far



afield.

THE COURT: Frankly, I was about to raise the question myself. I just can't see how any of this has anything to do with the problem.

MR. DEVINE: Your Honor, I would --

I don't understand why this man who has handled several transactions for Competitive Assocs., according to his testimony, whether he has an obligation to know what their investment goals were or the composition of what they had acquired. One, I don't see that he has any obligation to know it, and I don't see what it has to do with this case.

MR. DEVINE: I believe the relevance and the obligation exists, but I will move along to another subject and we can deal with that in context of legal argument.

THE COURT: All right.

Q Did you ever hear of Takara Partners?

A Yes.

Q When did you hear of it?

A When it was formed.

Q Do you know when it was formed?

A June of '69.

Q Do you recall how much before its formation you heard of it?

1 krs  
2 A Probably several months.

3 Q How was it that you came to hear of Takara  
4 Partners?

5 Q Yamata informed me that he was going to be leaving  
6 Kuhn, Loeb and setting up his own hedge fund and invited  
7 me to become an investor.

8 Q What was your understanding at that time, if  
9 any, as to what a hedge fund was?

10 A I felt that I had a sufficient knowledge as  
11 to be able to know what a hedge fund is and was.

12 Q What was your understanding at that time?

13 A Do you want me to go into a technical explanation  
14 of what a hedge fund is or do you want just a general  
15 statement? I could stand here for ten minutes and tell you  
16 how a hedge fund works and how it is supposed to function  
17 and the things that hedge funds do and don't do, as opposed  
18 to other types of funds. Do you want that?

19 Q Let me ask it another way.

20 THE COURT: I don't think we do.

21 Q Was a hedge fund a limited partnership?

22 A It needn't have to be. Takara Partners was with  
23 Yamata as general partner.

24 Q Was the business of a limited partnership the  
25 investment of funds?

1  
2 A Yes.

3 Q Were there any other general parnters in Takara  
4 Partners at the time of its formation?

5 A Not that I am aware of.

6 Q You indicated that you were invited to invest,  
7 did you indeed invest?

8 A With my family, yes.

9 Q What other members of your family?

10 A My father and I and two very close associates,  
11 who for all intents and purposes have always been treated  
12 as family members but are not in fact related, but have al-  
13 ways been involved in things that have been initiated by  
14 my father, or they would invite my father into things they  
15 initiated.

16 Q What were their names?

17 A Martin Bergman and Bernard Peltz.

18 Q Did each of you become limited partners?

19 A No. No. We formed a partnership and went in  
20 and purchased one unit under the name of Martin Bergman.

21 Q What was the total investment made by your  
22 partnership as a limited partner?

23 A One hundred thousand dollars.

24 Q When was that investment made?

25 A At the time Takara was formed.



Q In June of 1969?

A Yes.

Q How much of the \$100,000 did you contribute?

A Twenty-nine.

Q Were any of your brokerage customers also investors in Takara Partners?

A Give me a time reference.

Q At any time, ever.

A Yes.

Q Which of your customers were investors in Takara Partners?

A William Davis, the Shaws. There were others I don't remember. Hyman Escaba. I really don't recall.

Q Jacob Blumenthal?

A No. I did ask 'im would he be interested in investing in Takara and at the time of Takara's formation, he decided he was not going to invest in Takara.

Q Do you recall when Mr. Davis became a limited partner of Takara Partners.

A The people I have named -- as far as I know, none of the people that I had accounts for became associated with Takara after its formation. Shaw, Davis and any of the others, I think all came in at the same time, at its formation.

Q Did any of these people, namely, William Davis, the Shaws and Hyman Escava discuss with you their investment in Takara Partners?

A No, outside the fact they had it, no.

Q Did any of them discuss it with you prior to making the investment?

A No.

Q Did you offer limited partnership interest in Takara Partners to anyone other than Jacob Blumenthal?

Q And was refused?

Q Did you offer?

A Yes.

Q To who else, other than Jacob Blumenthal?

A Other members of my family. Other people who I thought might have wanted this particular type of investment vehicle. Some of them I was introduced to by accounting firms in Philadelphia. In fact, that is how I got to know Blumenthal, through Touche, Ross; but there are other people I had brought to Takara -- brought the Takara vehicle to, who said they didn't want to.

Q Did William Davis, the Shaws and Hyman Escava become your customers after June of 1969, or before?

A Escava, I would think, afterwards. Shaw and Davis, I don't remember. I will clarify one thing which you

2 didn't ask. They were introduced to me by Yamata.

3 Q I intended to ask that before I was finished.

4 We will come back to it.

5 Did you ever hear of Seijo Assocs.?

6 A Yes.

7 Q When did you first hear of that?

8 A Shortly before it was formed.

9 Q When was it formed?

10 A I knew you were going to ask that. I don't  
11 remember.

12 Q Do you recall the year?

13 A Maybe 1970, the end of '70.

14 Q Is it possible it was formed in mid-1971?

15 A June of 1971? No.

16 Q It was formed before that?

17 A Yes.

18 Q How was it that you first heard of Seijo Assocs.?

19 A Yamata told me he was starting up another hedge  
20 fund because he had a tremendous amount of interest because  
21 he was doing so well in Takara, and at this point, did I know  
22 of anyone who would be interested in investing; and I said,  
23 I don't know, I would check around. At that point in time,  
24 Blumenthal, who I had kept informed of how well Takara was  
25 doing, decided that on the basis of how well Takara did, he



1 would, in turn, invest now in Seijo. But I think that was  
2 the only one I recall who did invest.  
3

4 I think the Shaws also put some money into  
5 Seijo. I can't be positive of that, but I have some vague  
6 recollection that they did.

7 Q When you had this conversation with Blumenthal  
8 with respect to Seijo, was he at that time a brokerage  
9 customer of yours?

10 A I really don't remember. I had been in contact  
11 with him. Whether or not we had actually done business  
12 prior to that point, I don't remember.

13 Q What was the nature of Seijo Assocs., as you  
14 understood it at the time of your formation?

15 MR. WALKER: I wonder if I could inquire as to  
16 relevance. I don't think it is part of the claim. Perhaps  
17 there is. Perhaps there is some claimed tie-in on it, but  
18 it does seem to me we seem to be bringing up these subjects  
19 one after another and we go all the way through them --

20 THE COURT: I think you have made your point.  
21 Let Mr. Devine answer.

22 MR. DEVINE: I think this is just a tactic to  
23 have me explain the line of questioning to the witness before  
24 he concludes his questioning. I would be glad to explain it  
25 if the witness is excused.

THE COURT: All right, I would be happy to hear it, therefore we will excuse the witness.

(Witness leaves the courtroom.)

MR. DEVINE: I think it is quite clear, Your Honor, what occurred here, and I don't think the defendant is at all in doubt as to what the relevance of this line is. What Mr. Yamata was up to was the formation and marketing of limited partnership interests and that Mr. Engelbach was right in the middle of that. And one of the main mechanisms that was used -- not only were false financial statements used, which is the subject matter of a separate lawsuit, but one of the other mechanisms that were used to market these interests was the tactic which Mr. Davis testified to yesterday, namely, the formation of a separate brokerage account advised by Yamata, handled by Engelbach, in which profits would be generated as an inducement to a further investment in other limited partnerships. And the way Competitive Assocs. fits into that is that the profits were generated for these people by use of Competitive Assocs. as a dumping ground. And I don't think the defendant is at the least bit surprised to hear that explanation in the case.

THE COURT: You mean there is some connection between the Seijo fund and Competitive Assocs.?

MR. DEVINE: Not at all. That was the whole

1  
2 idea. Yamata was running Seijo Assocs. for his own benefit  
3 on the side and inducing investors into that entity. He  
4 was taking their money in that entity and on the other side,  
5 without disclosure to Competitive Assocs., was using  
6 Competitive Assocs. in order to induce those investments.

7 MR. WALKER: I think it comes with bad grace  
8 to make these sort of claims without representing to you  
9 there is any basis for them at all in the evidence in this  
10 case.

11 MR. DEVINE: I haven't been able to get it in.  
12 I am doing this now, and this is a relevance objection.  
13 When I explain the relevance, he says there is no evidence  
14 of it.

15 MR. WALKER: If I may address the Court.

16 The next point is, I certainly do not concede  
17 that these claims that are being made, which certainly  
18 doesn't find any proof of substantiation to my knowledge,  
19 in all the discovery which has taken place at this time.  
20 I take exception to the charecterization that I am fully  
21 aware of it. In other words, that I am perhaps trying to  
22 block out something in our search for truth. I certainly  
23 am not, and I certainly don't agree with the characterization  
24 of what happened, and if it would be appropriate to dehors  
25 the record and go into perhaps what is the motivation behind



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what happened here, I would be happy --

THE COURT: I will tell you what I am going to do. I have great difficulty at this point in seeing relevance, but there is no jury here, and on Mr. Devine's representation there is some tie-up, I will allow the question pursued. But I must say that tie-up is going to have to be made clear to me reasonably soon, and if I think it is not clear, I will disregard the testimony.

(Witness resumes the stand.)

MR. DEVINE: I am afraid we may have an open question.

(Record read.)

A Seijo was to be similar to Takara. It was to be a hedge fund and Yamata did express to me this was going to be of one the best-run funds ever, because he was putting a lot of his own family members into it, but it was basically a hedge fund.

Q What was Mr. Yamata's role to be in Seijo Assocs.?

A A limited partner -- I'm sorry, a general partner.

Q Were there to be any other general partners?

A I don't recall.

Q Did you ever invest in Seijo Assocs.?

A I did not.

Q Were you ever asked to invest?

1 krs  
2 A No, I don't believe that I was.

3 Q Were you offered an investment interest if you  
4 wanted it?

5 A No, but there were not a set number of units, for  
6 one thing. He didn't want to open a fund with \$100,000  
7 or 10 million. I think he would have taken in whatever he  
8 was able to get.

9 Q Did any of your relatives invest in Seijo  
10 Assocs.?

11 A No.

12 Q Did any of your brokerage customers invest in  
13 Seijo Assocs., other than Mr. Blumenthal, about whom you  
14 have already told us, and the Shaws, about whom you have  
15 already told us?

16 A As far as I know, they were the only ones. There  
17 may have been others that I am not aware of.

18 Q Did William Davis invest in Seijo Assocs.?

19 A I don't remember.

20 Q Did you have any discussions with him with  
21 respect to that investment or potential investment?

22 A I may have.

23 Q You have no recollection of the substance of  
24 those conversations?

25 A I am not even sure I had a conversation.

1 krs  
2 Q To your knowledge, did Mr. Yamata ever write a  
3 letter to potential investors in Seijo Assocs. telling them  
4 they could send money to you as indications of interest  
5 in that investment vehicle?

6 A I have no knowledge that he did. I just don't  
7 know. As far as I know, I have never seen a letter of that  
8 nature.

9 Q Did you ever have any discussion with Mr. Yamata  
10 in which he indicated that he was going to advise potential  
11 investors they could send money to you as indications of  
12 interest?

13 A No.

14 Q You mentioned earlier that certain of your  
15 customers were referred to you by Mr. Yamata.

16 A That is correct.

17 Q Which ones?

18 A The Shaws, Davis, Escava, Dr. Roth, Augustine  
19 Marisi. There are others which I did business with. Some  
20 members of his own family. There were some brokers -- not  
21 brokers. Some people in the investment banking field that  
22 opened accounts with me because they wanted to know what  
23 Yamata was doing. A fellow who was working at a mutual fund  
24 during the summer between semesters at the Harvard Business  
25 School who had heard of Yamata's reputation who opened up



an account with me because he wanted to be kept abreast of what Yamada was doing and he knew I spoke with him.

Specifically, I can't remember any more names.

Q Do you recall when the Shaws were referred to you by Yamata?

A No. About the time of the formation of Takara.

Q Do you recall when Mr. Davis was referred to you by Mr. Yamata?

A No, but I would imagine around the same time. Maybe later. I just don't know the answer to the question.

A Do you recall when Hyman Escava was referred to you by Mr. Yamata?

A No, I do not. Maybe this would make it easier if I say that Yamata was in the research department of Kuhn, Loeb. He had a lot of friends, but Kuhn, Loeb being the type of Financial institution that it is and was, they really weren't interested in handling small accounts, 100- or 200- or 300-share trader. Therefore Yamada would tell people that if they wanted to open up accounts and know what he was doing, they ought to open it with me or other brokers who he spoke with, and I would keep them informed. It would be easier than having Yamata call these people, and this started happening back in 1967. And these accounts could be anywhere from 1967 to the beginning of May of 1971.

1           Q       When the Shaws were referred to you by Mr. Yamata,  
2  
3       did he tell you he was making this reference?

4           A       I don't remember. I mean, it could have been  
5       the Shaws may have called me and said, Yamata said, I should  
6       open up an account with you because I think he is the  
7       greatest thing in the world, and I want to follow what  
8       he says.

9           Q       Do you recall whether Mr. Yamata told you that  
10       he was referring Mr. Davis to you?

11          A       No. It could have been the same sort of con-  
12       versation. Davis could have called me or Yamata may have  
13       called me and told me that, Bill Davis wants to follow what  
14       I am doing, why don't you give him a call and open up an  
15       account? There is no reason for me to specifically remember  
16       which way the calls went, who initiated them, whether I  
17       called them or they called me. It was basically centered  
18       around the fact that Yamata was telling them or telling  
19       me, We ought to set up a brokerage relationship.

20          Q       When you opened accounts for the Shaws, did  
21       you have any conversation with them with respect to the  
22       role that Mr. Yamata would play in the management of those  
23       accounts?

24          A       Yes.

25          Q       What was the nature of your discussion?

1           A       Again, I can't be terribly specific because  
2  
3       I don't remember the specifics, but basically it was Yamata  
4       would act as an adviser to the accounts and whatever Yamata  
5       would suggest, they would be perfectly amenable to go along  
6       with that and to do -- mostly it was on the buy side. On  
7       the sell side, meantimes, it would be really at the individ-  
8       uals discretion as to whether they wanted to sell the stock.  
9       They bought it because Yamata said to buy it and if it  
10      wasn't acting well, they would just assume, get out of it.

11               Also, these people handled trades through me as  
12      a broker, which had nothing to do with Yamata. Yamata would  
13      not be the type to recommend the purchase of American  
14      Telephone stock, but these people would in fact buy it.

15           Q       I am talking about the Shaws.

16           A       Specifically the Shaws, but in general, a lot of  
17      the other accounts which Yamata introduced to me.

18           Q       Do you recall any discussion with Mr. Davis  
19      when his account was opened with respect to Mr. Yamata's  
20      role in the management of his account?

21           A       Basically, it was the same thing. What Yamata  
22      wanted to do would be fine by these people. However --

23           Q       I am talking about William Davis.

24           A       All right. With Bill Davis, fine. However, I  
25      never had any written authorization from these people to



1 permit Yamata to trade their accounts. Therefore, any time  
2 I had to handle a transaction for them, if Yamata called  
3 and said, This stock looks good, you ought to buy it for  
4 Bill Davis, Jack Shaw, Hyman Escava -- that is a bad one to  
5 pick. I don't recall that Escava ever did very much, but those  
6 who might do something, I would, in turn, call them and say  
7 Yamata said this stock looks interesting and he thought you  
8 should buy it. Generally, the number of shares or how much  
9 they would buy, what quantity may have been dictated by  
10 Yamata or suggested -- I shouldn't say dictated -- which  
11 may or may not have fit with my customer. He maybe wanted  
12 to buy more or less or maybe not at all.

13  
14 Q Was there any relationship between Mr. Yamata and  
15 the management of Jacob Blumenthal's account?

16 A Say that again?

17 Q Was there any relationship between Mr. Yamata  
18 and the management of Jacob Blumenthal's account? Was he  
19 an adviser to that account like he was with the Shaws and  
20 William Davis?

21 A Yes.

22 Q Did you have conversations with Mr. Blumenthal in  
23 which you discussed Mr. Yamata's advisory role with respect  
24 to his account?

25 A Yes. Here I give you specifics because this is

the one time when it went the other way.

Touche Ross had introduced me to Blumenthal originally with the thought that Blumenthal might be an individual who would be interested in buying a limited partnership in Takara. He did not. He had conversations with Blumenthal subsequent to that, telling him what Yamata was doing, how well he was doing, reading him the letters that came down that he was sending out, saying how well Takara was doing. And finally when Seijo was formed, he put -- Blumenthal put money into Seijo on the basis of the fact that Takara was doing so well and he had known about the stocks that Yamata had been recommending, because I had passed them along to him. I had some accounts that had absolutely no relationship to Yamata but who knew I knew Yamata and they would ride his coattails, so to speak. If it was good enough for Yamata, it was fine for me. Why don't we buy a little bit of it.

Blumenthal was more or less along those lines. Yamata did not have quite the advisory role on Blumenthal's account as he had with the Shaws and Bill Davis. He wanted to know what he was doing meantimes, like a lot of my other accounts, and he would go along and do it.

Q Did either of the Shaws ever tell you that their son was a securities broker?

1           A       Yes, they did. We must have been trading for  
2  
3 a year or so and I was really surprised when Jack Shaw said  
4 that to me. I knew why they were doing it but it didn't  
5 dawn on me I was getting business which would have normally  
6 gone to their son. But I did not know that at the time  
7 the account was opened.

8           Q       How was it you learned that?

9           A       Jack mentioned it to me.

10          Q       Did he explain to you why he maintained an  
11 account with you despite the fact his son was a broker?

12          A       I never questioned him about that.

13          Q       Did he tell you why?

14          A       It was made clear in the beginning.

15          Q       It was ~~made~~ clear why he didn't use his son?

16          A       No. Why Shaw was using me, not why he wasn't  
17 using his son.

18          Q       What was the reason?

19          A       Because he wanted to know what Yamata said; not  
20 that Yamata wouldn't have told Shaw's son, but Yamata and  
21 I were always in constant communication. When he first set  
22 up his hedge fund, he asked me to put in a direct line  
23 between his office and my office in Philadelphia. We must  
24 have spoken three, or four or five times a day on any number  
25 of things. The point was, he found it easier to tell me



1 rather than being in a position where he may have to get  
2 up and talk to 10, 15, 20 different accounts. He didn't  
3 want to do that. He wanted to be able to use me as a  
4 conduit, really. That is why Shaw and these others had  
5 accounts with me, because I was a good conduit. I could  
6 inform them what Yamata was doing, otherwise he could have  
7 done it himself and kept them informed. They would have  
8 to have the other traditional brokerage arrangements, but  
9 there would be no reason except as a time-saving factor for  
10 Yamata. He didn't want to be involved in advising a number  
11 of people on a direct person to person basis. He did not  
12 want the run of business of that type, so he would give me  
13 the information and I then would be the conduit and pass it  
14 on to the others.  
15

16 Q When did you first hear of Fire Fly Enterprises?

17 A When Fire Fly was in the initial stages of  
18 going public.

19 Q Do you recall when that was?

20 A Early 1970.

21 MR. DEVINE: May we have marked as Plaintiff's  
22 Exhibit 11 for identification, a copy of the Fire Fly  
23 Enterprises prospectus. I note it has a tab on the front  
24 from a deposition, which I think we can ignore.

25 (Plaintiff's Exhibit 11 marked for identification.)

MR. DEVINE: I offer it in evidence.

MR. WALKER: No objection, Your Honor.

(Plaintiff's Exhibit 11 received in evidence.)

Q I show you Plaintiff's Exhibit 11 and ask you if that refreshes your recollection as to when you first heard of Fire Fly Enterprises.

A I can't be any more specific than I was. This is dated January 4, I knew about it before that time.

Q I think your earlier testimony was that you knew about it in early 1970.

A It was the end of '71 when it went public. I don't know why I said '70. The end of '70.

Q Before the offering described in Plaintiff's Exhibit 11 became effective, did you have any discussions with respect to that offering with Mr. Constantinou?

A Was he the underwriter?

Q Provident Securities was the underwriter and he was the principal of that company.

A Yes.

Q Do you recall when you had that conversation or conversations?

A Probably near the end of December 1970.

Q Was this a personal meeting or a telephone conversation?

1 A A telephone conversation.

2 Q Do you recall whether you called him or he  
3 called you?

4 A He called me.

5 Q What was said and by whom?

6 A He wanted to know whether my firm would be  
7 interested in participating in the initial underwriting  
8 of Fire Fly. My reaction to that was, I don't know. I had  
9 no jurisdiction over that. Send me a copy of the preliminary  
10 prospectus and the head of our syndicate department will  
11 look at it, read it and make a determination. This was  
12 sent. The determination was that my firm was not going to  
13 be involved in the underwriting.

14 MR. WALKER: May we have an identification  
15 which firm that was?

16 THE WITNESS: I was with Woodcock at the time.

17 Q Did you know Mr. Constantinou prior to this  
18 conversation with him?

19 A I had met Perry Constaninou through Mr. Yamata,  
20 and I think it was earlier than this time. I do not think  
21 this is the first conversation I had with him, but I can't  
22 be sure.

23 Q Did you subsequently call Mr. Constantinou back  
24 and told him your firm was not interested?



1           A       I don't think I did. I think the syndicate  
2 manager did.  
3

4           Q       Did you have any future conversations with  
5 Mr. Constantinou with respect to Fire Fly Enterprises  
6 afterwards?

7           A       After I bought the stock after the initial  
8 underwriting, I believe that I spoke with him to find out  
9 how things were going in the company to keep myself apprised  
10 of what was happening in the company. I don't think I spoke  
11 to him more than two or three times along those lines.

12          Q       When you say after you bought the stock, after  
13 you personally bought it?

14          A       I did not personally buy it. After  
15 some of my accounts bought it.

16          Q       Did I understand your testimony to be that these  
17 accounts purchased in the offering?

18          A       No, they bought it subsequent to the offering,  
19 in the after market.

20          Q       So it was after these purchases that you had  
21 these other conversations with Mr. Constantinou; is that  
22 right?

23          A       That is correct.

24          Q       Did your syndicate department tell you why it  
25 was that they decided not to participate in the underwriting?

1 krs  
2 A They didn't like the firm, Perry Constantinou's  
3 firm.

4 Q Did they tell you why, what they didn't like?

5 A They said it was too small.

6 MR. WALKER: If Your Honor please, I think the  
7 witness should be asked to give a yes or no answer to that,  
8 because if he went into the details of what the conversation  
9 was, we would be in the area of hearsay.

10 THE COURT: Did they tell you why they were  
11 not interested in the Constantinou firm? Did Woodcock tell  
12 you why?

13 THE WITNESS: Yes.

14 Q Prior to the effective date of the offering of  
15 Fire Fly Enterprises, did you have any conversations with  
16 Yamata with respect to that stock?

17 A Yes.

18 Q Can you recall, again prior to the offering date,  
19 how many such conversations you had with Mr. Yamata?

20 A No. The answer to the question is no, I have  
21 no recollection how many conversations.

22 Q Can you recall the substance of those conver-  
23 sations?

24 A No. I can't remember the substance.

25 Q Did you ever discuss Fire Fly Enterprises with

Philip Kaye?

A Yes.

Q When for the first time?

A I don't remember.

Q Was it before the offering, do you recall?

A It might have been.

Q What was the substance of your discussion with Mr. Kaye with respect to Fire Fly Enterprises?

MR. WALKER: I will object. Because Mr. Kaye, although previously a party, has settled with the plaintiff here and I think it would be hearsay as far as he is concerned. I have no objection to what Mr. Engelbach may have said himself.

THE COURT: Do you recall what you told him?

A I don't think I really told him anything. I think the conversations really went the other way around. They were just telling me about Fire Fly.

Q At the time of the public offering of Fire Fly Enterprises, did Yamata advise you to purchase any Fire Fly stock for any of your customers?

A After the initial offering?

Q Lets say first at the time of the offering, in the offering.

A I couldn't. My firm had turned it down. I had



no way of participating in the underwriting.

Q Did he advise you that your customers should purchase in the underwriting?

A Yes. He thought the stock was the greatest thing in the world. He thought they were going to make millions out of it. He was very high on the stock.

Q I am not asking you what Mr. Yamata thought. I am asking you if he told you at the time of the offering this was something that your customers should purchase.

A Yes.

Q Did you arrange for them to make purchases?

A On the underwriting?

Q Yes.

A No, I did not.

Q Did you ever have any discussions with anyone at Chartered New England Corp.?

A I don't think so.

Q When was it that any of your customers first made a purchase of Fire Fly Enterprises?

A After the initial offer.

Q When?

A I don't remember.

Q You don't recall how many weeks or days?

A Shortly afterwards. Whether days, weeks, I

1 don't know. It could be a couple of weeks after the initial  
2 underwriting that these people purchased the stock.

3 Q Do you recall whether the Shaws made any purch-  
4 ases in that time period, namely, shortly after the offering?

5 A I don't recall who purchased it, really, in the  
6 after market. I don't recall.

7 Q Do you recall who did?

8 A No, I don't remember. I mean, they sold it,  
9 so I presume since they sold it through me, they purchased  
10 it through me. And I know I didn't do any of the buying on  
11 the initial underwriting, so it is my guess they sold it  
12 through me, unless they had other arrangements, that they  
13 bought the stock from me.

14 Q There came a time, did there not, when you moved  
15 to Advest Company? You testified to that.

16 A Yes, of course.

17 Q And your accounts were moved at that time as  
18 well?

19 A That is correct.

20 Q And those accounts included the accounts of the  
21 Shaws, Mr. Davis and Hyman Escava?

22 A Yes.

23 Q Did those accounts, at the time of their transfer  
24 to Advest Company, have in position, in long position  
25

any Fire Fly Enterprises stock?

A Yes.

Q Did those long positions continue to be carried in their accounts at Advest Company?

Q Do you recall any securities being transferred from any other broker-dealers, namely, broker-dealers with whom you were not associated, into the accounts of any of your customers at Advest Company, and I mean particularly Fire Fly stock.

A I don't remember. There have well could have been. I just don't have any recollection at this time.

Q Do I understand your testimony to be that with respect to Mr. Davis, you don't recall when it was that he first made a purchase of Fire Fly stock?

A That is correct.

Q And therefore you don't recall any conversations with him in connection with his purchases; is that correct?

A Yes. I do know. I do recall that Yamata wanted certain people, where he was acting as an adviser, to be able to buy Fire Fly on the initial underwriting. My firm was not involved in it and I think Yamata had made arrangements for some of these people to purchase the stock from the original underwriter; but I had nothing to do with that. They opened up a brokerage account, I assume, through



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Constantinou's firm and the stock was purchased from them.

Constantinou's firm is not Chartered New England,  
is it?

A No.

Did there come a time when Mr. Davis sold his  
Fire Fly stock through you?

A He was on the list, wasn't he?

Q The list you refer to --

A I don't remember who sold.

Q The list you refer to is Plaintiff's Exhibit 9;  
is that correct?

A Yes, that is correct. Yes, William Davis did  
sell 700 shares.

Q And he was one of the customers that you spoke  
to on April 2 or April 1st?

A That is correct.

Q When you spoke to Mr. Davis with respect to  
that sale, did you advise him that Mr. Yamata thought it  
was an appropriate time to sell?

A I don't recall that I did say that Yamata said  
it was an appropriate time to sell. If anything, I may have  
said to him that there was a buyer around, was he interested  
in selling. I don't recall that I said to any of these  
people Yamata said they should sell. That doesn't make sense.

1  
2 Yamata is advising the fund to buy the stock. Why should  
3 he, on the other hand, be advising other people to sell  
4 their stock? He left the decision whether they want to sell  
5 the stock up to them.

6 Q Did you advise Mr. Davis that Mr. Yamata was the  
7 purchaser?

8 MR. WALKER: Objection. I don't believe that  
9 is a correct statement. The purchaser, as I understand it,  
10 is Competitive.

11 THE COURT: As I understand from what I under-  
12 stood from Mr. Engelbach's prior testimony, and I may have  
13 it wrong, Yamata called him to tell him that Competitive  
14 Assocs. was interested in the stock and if he had anyone that  
15 had the stock who was in a position to sell, and he made  
16 these various calls to these people and got yes or no, sir,  
17 and we went through all of that. I understood that the  
18 trader from Competitive called him and his company, and  
19 so forth. I didn't understand that Yamata was buying stock.

20 Q Who actually bought the stock from Mr. Davis  
21 on the 2nd of April?

22 A Competitive Assocs.

23 Q Are you sure?

24 A The ticket reads, and I will read you the ticket.  
25 All the sales were made to Competitive Assocs., Inc., Attention

Gordon Fleischer, with an address, Wilshire Boulevard,  
Beverly Hills, California.

Q Did Advest Company act as an agent in this respect  
for Mr. Davis as a seller?

A Are you asking whether this transaction was done  
on a principal or agency basis?

Q I'm asking you who bought Mr. Davis' stock.

A It appears to me that Competitive bought it.  
If you say that Competitive didn't buy it, I would like to  
hear what you are trying to get me to say, so I could  
better qualify it.

Q I just want your best recollection as to who  
Mr. Davis sold his stock to. Who was the buyer?

A Let me explain again, and you ask the question  
again.

Yamata called me and said, Competitive is  
interested in acquiring stock. Do I have any stock for sale  
in my accounts. I called the accounts. Some said they  
wouldn't sell. I found out I had 4550 shares for sale by  
my accounts. Competitive was interested in buying them.  
There is a transaction where Competitive bought the stock.  
My customers sold.

A The question is who bought Mr. Davis' stock.  
Isn't that fairly clear? Didn't Advest Company buy Mr. Davis'



1 stock.

2  
3 A You are asking me whether the transaction was  
4 done on a principal or agency basis?

5 Q I think my question is clear. I would like to know  
6 whether Advest Company purchased Mr. Davis' stock.

7 A And?

8 Q That is all I am asking.

9 A Then sold to Competitive?

10 Q All I am asking you is did Advest Company  
11 purchase Mr. Davis' stock.

12 A Yes.

13 Q Did Advest Company then turn around and sell that  
14 stock to Competitive Assocs.?

15 A Yes. This trade was handled on a principal  
16 basis.

17 Q And Mr. Yamata was the adviser for Competitive  
18 Assocs. who made the decision to purchase Mr. Davis' stock,  
19 which in the meantime had been sold to Advest Company; is  
20 that correct?

21 A Say that again.

22 MR. WALKER: I would object to the form of the  
23 question.

24 MR. DEVINE: I will withdraw the question.

25 Q When you spoke to Mr. Davis on the telephone

1 krs

2 and asked him if he wanted to sell his Fire Fly stock, did  
3 you tell him that you had just spoken to Mr. Yamata and  
4 Mr. Yamata had told you that Competitive Assocs. was inter-  
5 ested in buying a large block of that stock? Did you tell  
6 Mr. Davis that?

7 A Yes, along those lines. I don't know that I  
8 had used the name, Competitive. I am pretty sure I would  
9 not have used the name, Competitive. For one thing, I  
10 don't think it is of any client's business to know what  
11 another client was doing, and I think I told him there was  
12 a large purchaser of stock around, was he interested in  
13 selling?

14 Q Did you tell Mr. Davis that Mr. Yamata was the  
15 adviser for that large purchaser?

16 A I don't recall that I did.

17 Q When you spoke to Mr. Shaw or Mrs. Shaw, which-  
18 ever it was on that day, did you tell them that Mr. Yamata  
19 was the adviser for the purchase?

20 A No, I don't recall that I did.

21 Q When you spoke to Mr. Blumenthal on that day,  
22 did you tell Mr. Blumenthal that Mr. Yamata was the adviser  
23 to that purchaser?

24 THE COURT: Do you have to ask that question  
25 with regard to each person? Mr. Engelbach said he didn't

1 tell, and you can simplify this by asking him if he told  
2 anybody.  
3

4 MR. WALKER: My objection as to the general line.  
5 The only reason was, it really is irrelevant as far as  
6 these other customers are concerned whether they had any  
7 questions, or what not. Even if there were a failure of  
8 duty to them it would be irrelevant to this litigation.

9 THE COURT: Let's move on.

10 Q Were you and Mr. Yamata roommates at one time?

11 A Yes.

12 Q Was that prior to 1971?

13 A Yes.

14 Q Was he an usher at your wedding?

15 A Yes.

16 Q Do you know whether at any time Mr. Shaw and  
17 Mr. Yamata had a disagreement with respect to a stock called  
18 Monarch Industries?

19 MR. WALKER: Of his own personal knowledge?

20 MR. DEVINE: That is the way I phrased it. I  
21 asked him if he knew.

22 MR. WALKER: He might know through hearsay and  
23 I think a question like that -- it is appropriate to get  
24 the foundation of any knowledge if it is relevant.

25 THE COURT: This whole line is getting murkier



and murkier. I really can't see any relevance to this, to this case at all.

MR. DEVINE: May I be permitted three or four questions on this point?

THE COURT: I am not clear as to the relevance of any of this and it is going further and further while I am trying to understand it, and it is getting more and more obscure.

Go ahead.

Q You could answer the question.

A Repeat the question.

THE COURT: Do you have any personal knowledge of Mr. Yamata having some falling out with somebody about some stock?

MR. DEVINE: With Mr. Shaw with respect to Monarch Industries.

A Shaw told me at some point in time, I think even years after the transaction, that he had purchased Monarch Industries stock on Yamata's recommendation. This stock went way down -- I am sorry. Shaw sold it with a substantial loss, and Yamata had promised that he would do what he could to see that this loss would be made up. He would take extra special care of him where he could, to see that he could get back the money that was lost in as riskless a manner as

possible.

MR. WALKER: May I ask that be stricken. It is purely hearsay.

THE COURT: It is clear that is what that is.

MR. DEVINE: No further questions, Your Honor.

THE COURT: Any cross?

MR. WALKER: Yes, Your Honor.

I think I will have considerable cross-examination and I had planned -- I think in view of counsel's representations about his witnesses and everything, I had several of the documents that were mentioned in the pretrial order here that I wanted to introduce to use in my examination here. I was prepared to do it with other witnesses, but apparently nobody is going to be called.

I would expect that I would go substantially beyond 10 o'clock and I would have no objection if you wanted to interrupt as far as Mr. Zins is concerned.

THE COURT: We can do that, but you know what my problem of course is. To accomodate you gentlemen I have set another matter at 2 o'clock on the grounds we were going to proceed in the morning. That means that Mr. Engelbach will have to be here tomorrow morning.

THE WITNESS: I prefer not.

THE COURT: I know, but there is nothing I am

COMPETITIVE ASSOCIATES, INC. and  
COMPETITIVE CAPITAL CORP.

Plaintiffs

v.

Civ. 72 1847

ADVEST COMPANY, PROVIDENT  
SECURITIES, INC., PERICLES  
CONSTANINOU

Defendants

New York, April 18, 1975  
10:00 a.m.

(Trial resumed.)

MR. WALKER: Your Honor, our witness hasn't  
arrived. Perhaps we could use the time on two preliminary  
matters.

First, I spoke with Mr. Marshall yesterday  
about placing on the record the amount and identity of the  
settlements that have been arrived at in this case. I  
think Plaintiff's Exhibit 1 -- excuse me. Plaintiff's  
Exhibit 2 has an indication that the settlement on behalf  
of the former defendant, Chartered New England, was in the  
sum of \$5000. I wonder if Mr. Marshall could confirm?

MR. MARSHALL: The total amount is \$15,000.

MR. WALKER: Perhaps Mr. Marshall or Mr. Devine  
could state for the record that amounts of the settlement  
of the particular defendants.

MR. DEVINE: Your Honor, we would be prepared



1 at the conclusion of the case to file a stipulation or  
2 statement or whatever. This is not a secret. We would be  
3 prepared to give that information. The total is \$15,000.  
4 I don't see the relevance of the exact breakdown at this point,  
5

6 THE COURT: I believe, since it is no secret  
7 and it is during the course of the trial, I would think  
8 that Mr. Walker, for whatever it is worth in terms of his  
9 own client, would be entitled to that information. I don't  
10 see any reason why we should have to wait until later. If  
11 you have the facts, they should be spread on the record.

12 MR. DEVINE. The total amount received to date is  
13 \$15,000. 5,000 from Chartered New England Corp. The balance  
14 of 10,000 came from Sherwood Securities and the Fire Fly  
15 Enterprises defendants. As to the actual breakdown of that,  
16 we would have to go back and check our records, and we would  
17 be prepared to do that.

18 THE COURT: I think Mr. Walker wanted to know the  
19 total and he is obviously entitled to find out who paid  
20 what in terms of the settlement.

21 MR. WALKER: On that representation that appar-  
22 ently a schedule will be filed sometime during the course  
23 of this case.

24 If Your Honor please, I have pre-marked exhibits  
25 that I planned to use during the course of my examination

P E T E R   E N G E L B A C H ,       resumed the stand,  
having been previously sworn, testified further as  
follows:

THE CLERK:   You are still under oath, Mr.  
Engelbach.

MR. WALKER:   Your Honor, as far as pointing out  
any particular exhibits which I would draw to Your Honor's  
attention, is this the appropriate time?

THE COURT:   Yes, if it will help me cut through  
something.

MR. WALKER:   Exhibit A, the minutes of the  
Competitive Associates meeting of June 1971.   I particularly  
would direct your attention to the discussions regarding  
the elements possessed by new portfolio managers and the  
information concerning Takara and Yamata given to the board  
of directors June 1970.

Exhibit B, the July 7 letter to Yamata.   There  
are many relevant portions of it but at the present time,  
page 5 wherein it says, "We would be interested in learning  
in detail about the types of records you keep.   We are most  
interested in records concerning order payment and would like  
to know the provisions you have made to keep records as to  
the time an order was placed with CCC, the person who placed,  
any limitations on the order.   A description of other

relevant bookkeeping as it applies to both Competitive and you other clients would be most appreciative. The Investment Company Act of 1940 requires the retention by the manager of CCC, in this case, of research files concerning securities purchased for an investment company. Because of the unique nature of our organization, the onus must be on the portfolio manager to keep such records. However, we would expect to have immediate access to such records at all times."

THE COURT: It will take too long to do what you are proposing, Mr. Walker, I have to read these things anyway. Why don't you begin your examination and if there is anything you want to bring out, I think you better bring it out during the testimony, if it has a relationship to Mr. Engelbach.

CROSS-EXAMINATION

BY MR. WALKER:

Q Mr. Engelbach, what is your present position?

A I am a stock broker with Thomson, McKinnon & Auchincloss.

Q Where is your office?

A Jenkin Town, Pennsylvania.

Q Is Thomson, McKinnon & Auchincloss a local firm?

A No, it is headquartered in New York and I



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krs

Engelbach-cross

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consider it a national exchange.

Q Is it a member of any exchanges?

A Yes the leading exchanges.

Q Are you, sir, registered or licensed with any governmental or industry groups?

A I would have to have a license from the exchange, from the Pennsylvania Exchange.

Q Tell us what you have at the present time with regard to registration licenses.

A The American Stock Exchange, the Securities Exchange of Pennsylvania. I think, although I am not sure, I still may be registered with the New Jersey, New York and Florida exchanges and the Ohio exchange, but I may be registered with others that I am not too aware of because of the firm. There may be some sort of blanket coverage. I may be registered with state exchanges where I don't even do business at the present time.

Q Could you describe briefly to His Honor your duties and activities as a stock broker.

A Basically, the handling of orders for my customers where either they might say to me, buy something, sell something, or where I may in turn call them and say, I think this stock should be bought, or I think we ought to sell this out of your portfolio. This is where I am dealing

1 with my customers which I have. At other times I may be  
2 out trying to acquire new customers.

3 Q Mr. Engelbach, how long have you been in the  
4 securities business?

5 A I have been in the securities business since I  
6 got out of the business school, Columbia Business School  
7 1965, I believe.

8 Q Can you run through briefly your work experience  
9 in this business.

10 A For about a year I was with Kuhn, Loeb in New  
11 York.

12 Q Can you identify Kuhn, Loeb for us.

13 A Kuhn, Loeb is an investment banking firm.  
14 Members of the exchange traditionally consider them an  
15 investment banking firm as opposed to a brokerage firm. I  
16 was in the securities analysis operation. Basically, you  
17 call it research. I was there for approximately a year and  
18 decided I wanted to move into sales. I moved down to  
19 Philadelphia, which was my home town, thinking I would have  
20 have an advantage in sales in the area that I would best know,  
21 and I have basically been a salesman in the Philadelphia  
22 area since 1966 to the present with several firms. All  
23 during that time, acting basically as a salesman.

24 Q Could you perhaps in chronological order run  
25

through the firms with which you have been associated.

A Initially, for approximately a year, Stroud & Company. Then for the next three years with Janney, Battles & E.W. Clark. Following that, about nine months with Woodcock, Cummings, Taylor & French. Three months with Advest and for the past four years, I guess it is now, with Thomson McKinnon. Actually, with W.E. Hutton & Company, which was acquired by Thomson, McKinnon about nine months ago.

Q Are these all New York Stock Exchange members?

A Yes, they are.

Q During the direct examination, Mr. Devine mentioned your friendship or your acquaintance with Akiyoshi Yamata. Would you tell us how that friendship started, and I think you said it lasted through May of 1971.

A That is correct.

Q Perhaps you could review it for us?

A I was working at Kuhn, Loeb in the research department. Yamata had come down in the summer from the Harvard Business School to work at Kuhn, Loeb and he had proposed to go back to Harbard. He never did, he enjoyed it so much at Kuhn, Loeb. We became friends while he was at Kuhn, Loeb. I had an apartment in New York City and I just lost my roommate who was returning to England, and



1 he was looking for an apartment and we hit it off well at  
2 the time. And I said, "Why don't you come in and become my  
3 roommate?"  
4

5 We shared an apartment for three or four months,  
6 after which I returned to Philadelphia. He kept the  
7 apartment, but we developed a friendship, obviously, at  
8 that point and we kept in pretty much touch with one another  
9 after that.

10 The firm that I went to, Stroud & Company, was  
11 basically a small local firm, although a member of the New York  
12 Stock Exchange, and I felt that their research was not  
13 adequate and I would keep in touch with Yamata to find out  
14 what Kuhn, Loeb was doing, what someone else on the Street  
15 was doing. And basically we developed a business rapport  
16 which grew out of our friendship.

17 He then, at a later date, said to me, would I  
18 mind being a broker for some accounts he was advising while  
19 at Kuhn, Loeb, the type of accounts that Kuhn, Loeb was  
20 not interested in.

21 Q This is while you were still at Stroud?

22 A Yes. If I wasn't at Stroud, I had just moved  
23 over to Janney, Battles. I said, "Fine, there is no problem  
24 there." And I started getting accounts that Yamata had  
25 recommended that I handle. Basically, it started out as

1 friends and family who thought Yamat had a damn good track  
2 record, and at this time he was developing as one of the  
3 best analyst in Wall Street.  
4

5 Q What do you mean in this regard by "track record"  
6 and by "reputation as an analyst"?

7 A His reputation as an analyst and his reputation  
8 for basically picking good stocks -- you don't have to be  
9 an analyst to pick good stocks. If you have a Quija board  
10 to help you, people will like that just as well. The point  
11 is, he was picking stocks which were appreciating at a  
12 faster rate, say, than the average type of stock and he at-  
13 tracted a lot of people who thought that he was one of  
14 the best stock pickers, if you really want a good term.  
15 around.

16 Q What was his position at this time at Kuhn, Loeb?

17 A He was in the research department. I don't know  
18 whether when he first started sending accounts to me he was  
19 an officer. He was in fact one of the youngest officers  
20 ever appointed at Kuhn, Loeb. As an aside, at the time he  
21 went to set up his hedge fund, Kuhn, Loeb, I understand  
22 from Yamata, Yamata was telling me this, that Kuhn, Loeb  
23 offered to go out and raise \$50 million in Europe if he  
24 wanted to say and run that, but he wanted to go out and  
25 start up his own hedge fund.

He was very well thought of as a stock picker and a personable individual and somebody who I liked.

Q This is in the last half of the 1960's?

A Yes.

Q Go ahead.

A Then he started up his hedge fund. I went in and my family and I went into his hedge fund. I tried to get other people to go in. Actually, no one at that particular time who I did recommend going in did go in.

Q This is Takara Partners?

A Yes.

Q What was the time frame there?

A This would be mid-'69.

Q Was this before or after your marriage?

A This was way after. I got married in '66.

Q And I think Mr. Devine asked you whether he was at your wedding?

A Yes, he was an usher at my wedding.

As I said, we had always remained friendly. In fact, I would talk to him maybe five, six times a day. After he moved into his hedge fund, he asked me to put a direct line in so I could provide him with whatever information he really wanted that he couldn't get elsewhere.

Q What do you mean by that, specifically?



1           A       At this time the market was very, very electric.  
2  
3       There was a tremendous amount of trading and Yamata, who  
4       had basically specialized in over-the-counter stocks, where  
5       at that time the action was, was finding it very difficult  
6       to get good quotes on what was happening in the over-the-  
7       counter market, and this was essential to his method of  
8       operation.

9           Q       Can you explain what this business or problem  
10       involved in getting quotes on over-the-counter stocks, perhaps  
11       as distinguished from stocks listed with the stock exchange?

12          A       If a stock is listed, there were machines. All  
13       one had to do for a listed stock was push the symbols and you  
14       would get an immediate readout what the last price of the  
15       stock was. You could not at that time do it with an over-  
16       the-counter stock, so you had to basically go in and ask  
17       someone who, one, either made a market in the stock or was  
18       in telephone communication in one fashion or another with  
19       someone who in fact did make a market in the stock.

20               Well, the firms in New York were just so busy  
21       that they could not provide Yamata with the over-the-  
22       counter quotes he needed. He would sit on the phone and  
23       wait 20 minutes, a half hour, waiting for them to get back,  
24       and this did not suit him.

25          Q       Were conditions such at that time that that

made any difference?

Q Very much so. You remember, this was '69. It was a very terribly electric time in the market. I believe we were working four days a week because the paper load was so great, and the brokers came in only four days and the extra day in the week was trying to clear up paperwork. I believe the exchange was closing around 2 o'clock, so the day was shortened considerable. But while the trading was done, it was at a tremendous pace.

Q You mentioned when you started Stroud that Mr. Yamata referred people to you to open up accounts with your firm at the time. Did that continue?

A Yes, that continued right up until mid-'71 -- April, May 1971.

Q So it was certainly nothing unusual over a five-, six-year period for you to be referred persons?

A No. You must remember that Yamata, while at Kuhn, Loeb, could have in fact opened up accounts and handled these accounts himself. The policy of Kuhn, Loeb was to discourage small accounts. I think at Kuhn, Loeb at that time the only accounts you could open with investment advisory accounts were you would just basically turn over a portfolio or money probably valued in excess of a million dollars for them to run. They weren't interested in being the broker

1 krs  
2 that you call on the phone and say "buy me 50 shares of  
3 American Telephone and Telegraph.

4 Q I take it that you have always been that sort  
5 of broker?

6 A Yes, I dealt with the retail public.

7 Q That brings us up to around 1969. Is that when  
8 the hedge fund was started?

9 A Yes. The hedge fund was started in 1969. I went  
10 into it. Yamata asked for me to put a direct line in. He  
11 gave me business because I did provide him with quotes. Also,  
12 at Janney, Battles, we were a corner of Loeb, Rhoades, and  
13 we had access to all of Loeb, Rhoades research and statisti-  
14 cal information, which was useful to Yamata because through  
15 my firm he was probably in touch with one of the largest firms  
16 in the country that could provide him with information he  
17 might need.

18 Q I take it there was nothing at all improper about  
19 this?

20 A No, this goes on all the time. A smallish local  
21 type of firm, which is the banks, would have a corner in  
22 New York even though they are not located in New York.

23 You could say that Janney, Battles was a branch  
24 operation of Loeb, Rhoades. That is a simple way of looking  
25 at it, and I could provide my customers with Loeb, Rhoades



information. There is nothing wrong with that. That is the way it functioned and it was necessary for the corner type operation.

I was getting business from him, he was sending accounts to me. I was servicing those accounts and servicing the fund by providing whatever was asked of me, really.

Q Would you tell us about your association with Mr. Yamata with regard to the Takara fund?

THE COURT: I think he has told us that.

A Did you want Seijo or Takara?

Q I will try to go through that.

It consisted of Mr. Yamata as the general partner and then a number of limited partners?

A Yes.

Q And you and your dad and two family friends got together for one of the limited partnership units?

A That is correct.

Q Can you tell us the reason why you went into this limited partnership arrangement with Takara Partners?

A I thought that it was great. I knew what Yamata was doing. I knew what his track record was and when he told me he was forming the hedge fund and the way it was going to run, I thought this was fantastic, that I would be able to benefit and my family would be able to benefit

1 by having him directly run some money. Obviously, there  
2 were an awful lot of more sophisticated people than I am  
3 who thought the same thing. Probably the most preeminent  
4 was Keith Funston, the ex-president of the New York Stock  
5 Exchange who was an investor in Takara, along with the  
6 senior Dilworth, who at one time had been a senior partner  
7 at Kuhn, Loeb but at that point in time had left and was  
8 basically in charge, as I understand it, running a large  
9 part of the Rockefeller money.  
10

11 Q Did your business and social relationship con-  
12 tinue while you were at Woodcock?

13 A Yes.

14 Q You were a registered representative of Woodcock  
15 at the time that any of your individual customers who bought  
16 Fire Fly purchased the same; is that right?

17 A That is correct.

18 Q You didn't purchase -- none of your customers,  
19 while you were at Newburger, division of Advest, purchased  
20 Fire Fly from you?

21 A I don't recall that there was. I am not saying  
22 there wasn't. I just don't recall.

23 Q But your friendship and your business relation-  
24 ship, as you described, continued through the time you were  
25 at Woodcock and through the time you were at Advest, and I

think you mentioned it ended some time in May of 1971?

A It ended in a very traumatizing manner.

Q Will you tell His Honor the circumstances.

A As a limited partner of Takara, we were awaiting the 1970 year-end report.

Q When was that due?

A It should have been due for taxes so I think it should have been done before April 15, '71 so we could in fact pay whatever taxes had to be paid on the appreciation, and there was no question we had appreciation. We had letters down from Yamata telling us that it appreciated. In fact, we had a letter which came out stating that there will be an appreciation, use this for you tax basis, but the final audited figures have not yet been put down on paper by the auditors or there were some problems, but these figures are basically what it should be, and it showed basically an appreciation.

There was then called a meeting in the middle of May by Takara, by Yamata, for the limited partners of Takara. We met in New York City, at which time Yamata said that Takara was basically out of funds, illiquid. He held to the belief that most of the money that he had, although it was tied up in letter stock, and so on, would have a value and over the years we would be able to collect back, or the



1 money may even show a profit. The reason for this is, he  
2 said there was several hundred thousand dollars available  
3 in the fund but there had been requests for redemption in  
4 excess of 700. He couldn't meet the redemption and said,  
5 basically, the fund was insolvent and illiquid.  
6

7 Q Was that a surprise to you?

8 A I was absolutely shell-shocked by this. I said  
9 I was traumatized. I didn't understand it because I had  
10 absolutely no indication that this was at all the case. I  
11 knew there was an SEC investigation going on. I had spoken  
12 to Yamata about it but he said that it was an investigation  
13 where he was basically providing the SEC with information that  
14 had to do with John Galanis, that Galanis was a bad boy.  
15 But Galanis at one point in time for a short period of time  
16 had been a general partner of Takara and I had no reason not  
17 to believe Yamata. I still had complete and absolute trust  
18 in him and there was nothing demonstrated to me prior to  
19 this to change this opinion. This is someone I had known  
20 at that point for five years and there was never indication  
21 he was anything except but what I thought he was, and what  
22 a lot of people other than I thought he was.

23 Q Did you have any discussion with him following  
24 that disclosure in the middle of May 1971?

25 A Yes. After the meeting, I walked back to his

1 office and my comments were, "I don't understand this at all.  
2 This comes absolutely out of the clear blue." He said,  
3 "Don't worry, everything will be taken care of. All this  
4 was really caused by Galanis. I didn't want the other people  
5 to know about it. I thought thought there were some ways  
6 around it where I could get the money into the partnership  
7 by building it up and that this thing would have passed.  
8 But it hasn't and it was all Galanis' fault." I believed  
9 him at that point. Subsequent to that, I never saw him  
10 again nor did I speak to him.  
11

12 Q How about the \$100,000 that you and your family  
13 put up?

14 A We now have a \$4 million suit against Laventhal,  
15 Krekstein, they were the auditors who certified the 1969  
16 statment. Maybe I will be able to collect comething back  
17 from that.

18 Q Have you gotten anything from Takara, any return  
19 at all?

20 A No.

21 Q Up to that middle of may 1971, your relationship  
22 continued up to then on a business and social?

23 A Yes.

24 Q Did you have any business or social contact  
25 thereafter?

A Absolutely not.

Q Up to that point, were you ever asked by Yamata in business, in your business, to do anything which in your mind was illegal or unethical?

A No.

Q With respect to Fire Fly, it is my understanding at the time it came out, you were at Woodcock?

A That is correct.

Q And Mr. Constantinou apparently contacted you to see whether Woodstock wanted to be part of the selling group, and this did not go through?

A That is correct.

Q None of your clients bought through the initial offering?

A Not through me.

Q Did you have any discussions with Yamata about the merits of Fire Fly as an investment?

A Yes.

Q Will you tell us about those.

A He was very excited about the outlook for Fire Fly. He said that the president of the company was a noted geologist, a professor at one of the universities in Utah, maybe Salt Lake City. There is a fine school of mines in Utah. I think he may have been associated with that --



1 who had developed a technique to reopen and economically  
2 and profitably mine. And I thought it was a gold mine at  
3 the time. Maybe it was another type of mine, but the idea  
4 of a gold-mine stock, in my mind, to mine these played-out  
5 gold mines again, using different techniques than were  
6 traditionally used, I would keep myself abreast of what was  
7 going on there, basically because Yamata felt so strongly  
8 about it. I went into the after-market, since I could not  
9 participate in the initial underwriting. And I went into  
10 the after-market and bought the stock at a little higher  
11 price than when it came out, and basically sat with it for  
12 a period of threemonths, until I got a call from Yamata,  
13 asking me if these people would be happy to sell it.

14 Q You mentioned you yourself were not generally  
15 -- you yourself had reservations of mining stock?

16 A Not mining stock, but gold stocks. They are  
17 much too political. I think there are other ways of making  
18 money in the stock market, or losing it, and I think gold  
19 stocks are basically, as far as I am concerned, are such that  
20 things happen to the price of gold which I could not figure  
21 on in any sort of normal type of relationships that exist  
22 in business and in the economy, and so on. An example  
23 would be, if they had a bad rainstorm in Russia and it  
24 wiped out their winter wheat crop, they go out on the open  
25

market and pay for it in gold. Therefore they increase the supply of gold in the open market and the price of gold goes down. And I don't want to bet on what will happen as a result of a rainstorm in Russia. So I had some very serious reservations in my own mind. So I wouldn't go into it but I would present it to other customers who might be interested in it.

Q Mr. Engelbach, did you receive at any time a Fire Fly prospectus?

A Are you saying prospectus or preliminary prospectus? I received a preliminary prospectus. In fact, I'm not sure I didn't receive two of them. One from the original underwriting that went to the firm, our syndicate manager, and one directly from Yamata. And subsequently I did get the final prospectus.

Q Where did you get that from?

A From Yamata.

Q And that was at the time he was portfolio manager for the plaintiff, Competitive Assoc.?

A Yes.

Q And you received the final prospectus from Yamata?

A Yes. I recall, he in fact was reading stuff to me out of the final prospectus; and I said, "Do me a

and send it to me, it will be a lot easier."

Q When you were at Woodcock, several of your customers bought Fire Fly. Do you call that the after-market?

A Yes.

Q So that is after the date of the issuance?

A That is right, when it is trading after the original issuance.

Q And it was trading on an over-the-counter basis at that time?

A Yes.

Q And you went out and found some for them after they requested you to buy it?

A Yes. I spoke with my customers and said, "You want to be told what Yamata is thinking, and he is really high on this stock." I explained to them why. And they said, "Buy some for me." The normal procedure at this point for me would be to sit down and write up an order ticket, which I in turn would turn over to an over-the-counter trader. Actually, if you are a small firm, the over-the-counter trader and the listed trader would be the same person.

Q What was the situation at Woodcock?

A We had two traders and both did the same thing. Or rather, they did both. Whoever was not busy, I would



1 give him the order and he would in turn open up the pink  
2 sheets --

3  
4 Q What is the pink sheets.

5 A It is sort of the yellow pages of the stock  
6 market where they would have the names of the stocks in  
7 alphabetical order. Opposite the names of the stocks would  
8 be the people who are making a market in the stock. If I  
9 give an order to buy Fire Fly Enterprises and my trader  
10 never heard the name before, could in fact open up these  
11 pink sheets, which come out every day, and see the names  
12 of the houses, the names of the firms making a market in  
13 the stock of Fire Fly.

14 I gave my order to the over-the-counter trader.  
15 He in turn went out to find who was making the best market  
16 and buy the stocks from them.

17 Q I am going to show you some photocopies of a  
18 document.

19 A This is a photocopy of the pink sheets.

20 MR. DEVINE: Could we have it marked.

21 MR. WALKER: I could mark this folder and I  
22 think I would like to give counsel a chance to look at it  
23 before I ask for it to be marked as a full exhibit, because  
24 it is so voluminous.

25 (Defendant's Exhibit W marked for identification.)

MR. DEVINE: May I inquire of the contents of this?

MR. WALKER: They appear to be copies of the pink sheets from the start of the initial trading of Fire Fly to sometime in June 1971.

THE WITNESS: And they would show the prices.

MR. DEVINE: It looks like the last date is May 27, 1972, but I have no objection to this being into evidence.

(Defendant's Exhibit W received in evidence.)

Q Taking the first page here, perhaps you could review for myself and Judge Carter how one would read the pink sheets there, just by way of explanation.

A Since it is alphabetized, you would flip through until you found the correct stock, which would be listed on the left side. I can't read the very top one on this page but the first one you could read reads, Financial International Corp. Obviously, if you were looking for Fire Fly, you would look below that in the alphabet until you came to it.

You see Fire Fly Enterprises, Inc. Next to that you have a list of nine brokerage firms that are making a market in the stock.

Q Can you, just to clarify the record, read off

read off the first three or four.

A Burtner Bros., Axelrod, Mayton --

MR. DEVINE: I believe that is Hayton.

THE WITNESS: You are right.

A -- Next to that there are telephone numbers.

Q What are the telephone numbers in there for?

A So you could call them. If I was running a small brokerage firm and I wanted to buy Fire Fly and I went over here and saw Hayton Corp. made a market in it, I might want to call them, but I wouldn't have to bother going to another separate book to find out their telephone number. It is right there.

Their telephone number would put me in direct contact probably with the trader.

After that, there is a price. This is a price they had reported somewhere between 11 o'clock and 1 o'clock of the preceding day. And to give you an idea, the prices on the bid side, the side that an investor who wanted to sell his stock would get if he did sell it, was anywhere from a low of five to a high of five and a quarter. If you wanted to buy, the price was a low of five and a half to a high of five and three-quarters.

Q I take it that doesn't mean that the stock on the day that you look at it can be purchased at the same price



1 or bought at the same price as listed in the latest pink  
2 sheets --

3  
4 MR. DEVINE: I wonder if Mr. Engelbach is now  
5 testifying as an expert?

6 MR. WALKER: I think it helps to explain what  
7 the significance of pink sheets are.

8 MR. DEVINE: That would require expert testimony  
9 and if that is what we are up to, I don't think the form  
10 of the form of the question is proper.

11 MR. WALKER: I think a man who has been in the  
12 brokerage business --

13 MR. DEVINE: I did not say I challenged the  
14 qualifications. I challenged the form of the question if  
15 we are dealing in expert testimony.

16 THE COURT: The only information on that that  
17 I need to know, aren't those prices the prices being quoted  
18 by the various brokerage houses on the pink sheets?

19 MR. DEVINE: We would stipulate to that, Your  
20 Honor.

21 THE COURT: Mr. Engelbach seems to indicate that  
22 is not true.

23 THE WITNESS: It is indicative that the fact  
24 these are printed; they could, at best, be a day or two late.

25 THE COURT: But the brokerage houses that deal

1 in the stock, that is an indication of what the prices that  
2 they are quoting to buy or sell?

3 THE WITNESS: Yes, but not at the time that  
4 somebody would receive them.

5 THE COURT: The point is, there is a time lag  
6 and there might be a change.

7 THE WITNESS: That is correct.

8 Q Mr. Engelbach, can you tell us -- and let's  
9 limit this to 1970 -- what procedure you would go through  
10 with a customer that wanted to purchase an over-the-counter  
11 security?  
12

13 A Basically, it was the same as I explained  
14 previously. I would get an order from a customer. I would  
15 then proceed to write my order ticket. I then handed over to  
16 a trader who would in fact, if it is an over-the-counter  
17 stock, call one of these firms who in fact made a market in  
18 it; buy the stock from them, mark up my ticket showing I  
19 had bought the stock at what price. Possibly they may  
20 make a notation on that slip from whom I bought the stock,  
21 the other broker, then it is generally four or five copies  
22 of the ticket. I would get back a copy. Part of the copy  
23 would go into the over-the-counter section. Another might  
24 go to the purchases and sales department, then the accounting  
25 department to generate a confirm to go out to the customer.

Q And the confirm is what the customer would get?

A That is what he receives.

Q In selling an over-the-counter security, would you do much the same?

A It would be the exact same thing.

Q The Fire Fly trade sale to Competitive, the one you were involved in in 1971, that was done, I think you said on direct, on a principal basis. Would you explain that.

A There are two ways of handling a trade. Principal or agency. Agency refers to the point that you are in fact buying it for the customer, putting a commission on it. All trades done on all exchanges are handled in that fashion.

Q This was not such a trade?

A This was bought in the over-the-counter market, at which point you have discretion as to whether or not you want to do the trade with whatever price it cost you to buy plus a commission, the agency; or do it on a principal basis, buy the stock at one price and turn around and sell it to the customer at a high or lower price, depending if you are buying or selling, and thereby keeping the difference what you bought it for and what you sold it for as your "commission."

Q Would you tell us what factors were operative in



1971 to determine whether such a trade would be done on an agency or principal basis?

MR. DEVINE: Is this calling for testimony with respect to the trade with Competitive Assocs. or is this general?

MR. WALKER: This is general.

MR. DEVINE: I object to its relevance.

THE COURT: The only thing that is relevant is what was the practice of Woodcock to deal on this trade on a principal or agency basis.

MR. WALKER: I will withdraw my previous question.

Q Mr. Engelbach, with regard to the transaction involving the sale -- first of all, the purchase of the sale from some of your customers and the sale of Fire Fly to Competitive, would you tell us what factors were involved?

THE COURT: I think I understand. You have gone over the buying from the customers. That is all in the record. The only issue that is not clear is why the transaction after the firm decided to authorize the transaction and that would enable Mr. Engelbach to sell the stock to Competitive, why they did it.

Q Why was that done on a principal basis?

A Normally, the firm, or the salesman, has discretion. In this particular case there was no discretion.

I am not sure if it is the Securities Exchange regulations or just practice that had developed in the business, but institutions when buying an over-the-counter stock must get "the best price."

Q You mean such as mutual funds?

A Mutual funds. Specifically mutual funds, in order to get "the best price," they are not supposed to pay a commission. They would go into directly the people who have stock available. It needn't necessarily be a firm making a market in the stock if for some reason another firm happens to be in touch with a large supply of stock and they would go to that other firm to try to buy the stock.

It so happens in this particular trade with Competitive, they should not have bought the stock with a commission. Hence, the only other way to do it would be on a principal basis, so basically having bought the stock almost three months before, while I was at Woodcock, the time sequence now has moved forward three months and I am now at Advest, where I had been asked to sell the stock, or where Yamata says there is a buyer, am I interested in buying.

What I must do now is sell to Competitive at the best price. That best price would have to be done on a principal trade. I think it may even state so in whatever rules and regulations that exist in an over-the-counter stock

on a principal basis.

THE COURT: Now I am a little confused because I thought this whole transaction took place after you got the call, or conversation with Yamata and conversation with Competitive --

MR. WALKER: The purchase of stock of the individual customers --

THE COURT: I thought all these conversations, the telephone calls from California and your consultations with your superiors, I thought that all took place at Woodcock; but that took place at Advest?

MR. WALKER: Yes.

MR. DEVINE: Advest also has to do with the purchase from the owners of Fire Fly at that time, their own customers, the same way Mr. Davis, the Shaws, and so on.

THE COURT: It seems to me as I recall the transaction of Mr. Engelbach picking up the stock from his account, then in turn getting commission and selling it, took place in a matter of days. So that is how I understand the record.

MR. WALKER: Perhaps it might be well to spend a couple of minutes -- perhaps it is my fault there is some confusion.

Q As I understand it, you were at Woodcock when



1 the issue first came out?

2 A Yes.

3 Q You had conversations as to whether or not  
4 Woodcock would be part of the selling group?

5 A That is correct.

6 Q In the after-market while you were selling at  
7 Woodcock, Yamata recommended that this was a very good stock  
8 to buy. This word was passed on  
9

10  
11 THE COURT: Mr. Walker, that is all clear. I  
12 understand that. I think I also understand the rest of the  
13 transaction. That is, if buying the stock ack for a pos-  
14 sible sale to Competitive and having these conversations,  
15 and so forth, that was something that did not take place in  
16 a matter of days or took place while he was at Advest.  
17 Let him tell us.

18 A Shall I go through the mechanics of how this  
19 trade was made?

20 THE COURT: I already understand that.

21 THE WITNESS: I don't think you do. When you  
22 do a principal transaction, you buy from your customer and you  
23 sell -- the firm buys -- on a principal transaction, the firm  
24 is in the position of being like in the middle. They buy  
25 from one customer and sell to other customers.

THE COURT: That is all very clear.

THE WITNESS: Done simultaneously.

THE COURT: All right, I understand that.

Q And that is what happened?

A Yes.

Q While you were at Advest?

A Yes.

MR. WALKER: Your Honor, at this point I was going to ask the witness to review Defendant's Exhibit I, and perhaps this would be an appropriate time for Your Honor to take your mid-morning recess.

THE COURT: You mean you want to look at that while we have a recess?

MR. WALKER: Yes.

THE COURT: We will take a ten-minute recess.

(Recess.)

BY MR. WALKER:

Q Mr. Engelbach, what was the price Fire Fly was sold to Competitive in April?

A Six and three-quarters.

Q What price was paid to the customers who sold it at that time.

A Four and a half.

Q What happened to the quarter of a point?

1  
2 A The quarter of a point -- I am going to use a  
3 word which is not exactly correct but makes it clear. The  
4 quarter of the point is "the commission" involved in the  
5 trade. I think this is very significant.

6 Q How does it compare with commission, say, if  
7 this could have been done on an agency basis?

8 A The commission would have been three, four times  
9 greater than the charge on a principal basis.

10 Q So this was a principal's trade. Was there any-  
11 thing out of the ordinary about it?

12 A I didn't make as much money.

13 MR. DEVINE: Objection.

14 Q I mean the mechanics of it. Having some custom-  
15 ers from whom you would buy an over-the-counter stock and  
16 selling it.

17 A Absolutely none.

18 THE COURT: In view of what this case is all  
19 about, I think the question is legitimate, and he has  
20 answered.

21 Q Have you had an opportunity to read Defendant's  
22 Exhibit I during the recess, sir?

23 A Yes.

24 Q That is a letter from Mr. Markizon dated February  
25 2, 1971 to the Securities and Exchange Commission, and in it



1 it says that Competitive Capital Corp., the fund manager  
2 makes the decision as to which brokers are used in any given  
3 transaction.  
4

5 I think you mentioned that you spoke to somebody  
6 at Competitive Assocs. in California before the trade was  
7 made?

8 A That is right.

9 Q And you refer to him as the trader?

10 A Yes.

11 Q For a fund, now, it would be different for other  
12 institutions, but the trader for the fund is the clerk who  
13 would be authorized to actually buy and sell stocks, bonds,  
14 what have you, for the fund.

15 MR. DEVINE: I move to strike the last answer.  
16 There is no foundation for this witness' knowledge of that  
17 subject. If the proper foundation is laid, I would have  
18 no objection. He is testifying as to the authority of  
19 somebody who on direct examination couldn't even remember  
20 his name.

21 MR. WALKER: I don't claim it for establishing  
22 any authority in this case.

23 THE COURT: Mr. Walker, I really don't under-  
24 stand anything about this at all.

25 MR. WALKER: I just asked what a trader was.

1                   THE COURT: What difference does it make. All I  
2  
3 gather from the testimony yesterday, and I don't think  
4 it has been added to at all, is that he dealt with this man  
5 from Competitive. Plaintiff's, I gather, are not claiming  
6 that the man wasn't authorized to deal. That is incontro-  
7 verted.

8                   MR. WALKER: This has to do with the interpre-  
9 tation of this letter, which the plaintiff says the fund  
10 manager rather than the portfolio manager makes the decision  
11 as to which brokers are used on any given transaction. I  
12 think this is an admission of theirs and I think it is the  
13 fact, but I think it is significant as to any claim of  
14 fraud or scheme.

15                  THE COURT: But I don't understand the question  
16 about what a trader does has anything to do with that.

17                  MR. WALKER: I am relating the decision of the  
18 fund manager -- I will be happy to move on.

19                  Q       This is the last question on this exhibit.

20                        The letter goes on, and this says, "Management  
21 management suggestions as to who might bid or offer securi-  
22 ties is not to be followed up. To that extent only, it is  
23 prevelant on smaller over-the-counter issues," et cetera.

24                        Do you know of any reason why a portfolio  
25 manager such as Mr. Yamata, his relationships or ideas,

might have a greater influence on which brokers might be used.

MR. DEVINE: Objection to the form of the question. It is highly speculative.

THE COURT: I will sustain the objection.

Let me see that.

This is from Competitive?

MR. WALKER: Yes. The reason I am claiming it, if you would like the basis of it, is that Mr. Devine yesterday seemed to imply that there was something improper or wrong with Mr. Yamata being able to call a broker whose customers might have some of the stock.

THE COURT: The only thing I can understand is that Mr. Engelbach will not be able to help us in this regard. This is a matter of Mr. Yamata working with Competitive. I think Mr. Engelbach has made clear why Mr. Yamata had this relationship with him, It is all in the record. Mr. Yamata's relationship with Competitive and the degree of discretion they gave him is something I don't believe we can get from Mr. Engelbach.

MR. WALKER: Only this, Your Honor, that the claim has been made that there was something in some way wrong, or this was part of a scheme.

THE COURT: Yes, but they have to prove that it was part of a scheme, and the relationship has been set out.



1 The only thing you can do, and you have done it, is to  
2 spread out on the record Mr. Engelbach's relationship  
3 with Mr. Yamata to try to convince me that it is not what  
4 plaintiff said. I don't think you can do anything more than  
5 that. He can't tell us about Mr. Yamata's relationship  
6 with Competitive.  
7

8 MR. WALKER: My only point is, this shows the  
9 way that the fund was in fact doing business and this is  
10 consistent with it.

11 THE COURT: But what I have to do is to read  
12 that letter and interpret it.

13 MR. WALKER: Thank you, Your Honor. I will move  
14 on. I think I understand.

15 Q With regard to the customers of yours who were  
16 contacted in April of 1971 to inquire as to whether or not  
17 they would like to sell their Fire Fly stock at that time,  
18 did I understand you to say that some of them decided to  
19 hold on to it and not to sell at that time?

20 A That is correct.

21 Q What price did you buy the stock three months  
22 before when you were at Woodstock?

23 THE WITNESS: I think it was around 4 1/2 or 5.

24 Q Do you know what price it came out at?

25 A It came out at 3 1/4. The prospectus had that.

That is the only reason I remember it.

Q Showing you Plaintiff's Exhibit 4. Mr. Davis is one of the ones who was your client?

A Yes.

Q At least some of his stock, according to Exhibit 4, 500 shares he didn't sell until June 21, 1971.

A Yes, that is correct.

Q How many shares did he sell?

A Five hundred.

Q What was the price he got at that time?

A Four and three-eighths.

Q And that was sold through Advest?

A That is correct.

THE COURT: This was well after?

MR. WALKER: Yes.

Q On April 2, before the trade was finalized with Competitive Assocs., I understand Mr. Weintraub from your office called from the Advest office?

A That is correct.

Q What was his position?

A He was the general partner of Advest. Specifically, on the organizational chart, I don't know what his title was.

Q What was ascertained as a result of that?

1           A       That Competitive Assocs. was interested in  
2  
3 buying stock, that it was all right to do the trade, that  
4 their trader had authorization to purchase the stock and  
5 that they were in fact acquiring the stock and that it  
6 was known to the management of Competitive that this was in  
7 fact what they were doing.

8           Q       Did anybody at Competitive tell you that as of  
9 the day Mr. Yamata was hired as portfolio manger, October 9,  
10 1970, that there was a discussion by the board of directors  
11 of the plaintiff, Competitive Assocs., about rumors of an  
12 investigation of Mr. Yamata involving some investments Mr.  
13 Yamata made in Herrick Extension Services?

14          A       No.

15               MR. DEVINE: Objection as to relevance.

16               THE COURT: That objection is overruled.

17          Q       Did anybody at Competitive Assocs. tell you that  
18 Mr. Yamata was called on January 13, 1971 to meet with their  
19 board of directors.--

20          A       No.

21          Q       I hadn't finished with my question. -- with  
22 regard to rumors related to his activities with the fund --  
23 unrelated to his activities with the fund, which, however,  
24 might bear adversely on the fund, and that the board of  
25 directors were advised that they had information that the



Securities and Exchange Commission was investigating a company of which Mr. Yamata was an officer and Mr. Yamata personally, concerning the artificial manipulation of 15 stocks, three of which, Competitive Assocs.?

A No.

MR. DEVINE: Objection as to relevance.

THE COURT: This is during or prior to the period when the stock was bought and sold?

MR. WALKER: This is January, within a week after Fire Fly --

THE COURT: Objection overruled.

Q Were you told that in January 1971, January 13, 1971, that it was brought to the attention at the meeting of the board of directors of Competitive Assocs. that there were allegations by the Securities and Exchange Commission against Mr. Yamata, including receiving consideration for recommendations of certain stocks, undisclosed profits for the purchase of said stocks, and fictitious orders?

A Absolutely not.

MR. DEVINE: Objection, irrelevance again. Also to the technique of excerpting a document and asking the witness.

THE COURT: The point is, Mr. Engelbach has so far testified he had no reason to know anything adverse about

Mr. Yamata until the time they severed their relationship, which I recall was in May 1971.

Do the minutes show that Competitive had discussions about Mr. Yamata while he was retained as their fund manager?

MR. WALKER: Yes. That is Defendant's Exhibit H that I am referring to for the record.

THE COURT: All right. I would prefer, frankly, Mr. Walker, for us to cover that, and you make a general question to Mr. Engelbach in this regard.

MR. WALKER: I don't believe the witness is familiar with the particular exhibit and I am almost through.

I bring to Your Honor's attention a connection of a judicial admission contained in the amended complaint in this action, to wit; Alleging that Mr. Yamata was an employee of the plaintiff.

THE WITNESS: Am I permitted a question?

MR. WALKER: No, you are not, unless His Honor says you may.

Q Was it ever brought to your attention by Competitive Assocs. that it was discussed at their January meeting with Mr. Yamata a lawsuit pending in this court, the Southern District of New York, entitled, Armstrong Investors v. John Peter Galanis, Akiyoshi Yamata and Everest

Management?

A No, sir.

MR. DEVINE: Same objection, Your Honor.

Q Was it ever brought to your attention that in March of 1971, Mr. Markizon, secretary of the plaintiff, on appointment visited the offices of Takara Asset Management Corp. to review and inspect its records, and did not do so because Mr. Yamata was not present at the time of that appointment?

A No.

MR. DEVINE: Objection to the form of the question. It lacks foundation, also.

MR. WALKER: I refer to Defendant's Exhibits L and K for my foundation.

MR. DEVINE: You refer to them inaccurately, in my judgment.

MR. WALKER: The record will indicate.

THE COURT: Off the record.

(Discussion held off the record.)

BY MR. WALKER:

Q At any time, were you advised by Competitive Assocs as to the degree of supervision or lack thereof that was being exercised over Mr. Yamata by them?

A No.



MR. DEVINE: Objection as to the form of the question. It lacks foundation.

THE COURT: The objection is overruled.

Q With regard to Fire Fly, the transaction in April, what did you yourself personally benefit by?

A I got a percentage of the spread between the 6 1/2 and 6 3/4"s. A quarter point spread. I got a percentage of that.

Q To the best of your recollection, tell us what that was that came to your pocket, specifically.

A I don't know. There have been so many changes made in the commission structure since then. My guess is it was probably 40 percent of the total quarter-point spread.

Q And I believe the amount of the shares was --

A If we assume it is 4000, you could say \$1000 would have been the gross total commission on this transaction, of which I would have gotten \$400.

Q There were 4350 shares. The gross total commission would be 40 percent to Advest?

A Yes.

MR. DEVINE: We will stipulate the firm made a market up of approximately \$1,087.

Q And 40 percent of that was yours?

A Yes.

Q Did you receive any other benefit from this transaction?

A No.

Q From either the buyer or the sellers?

A None.

THE COURT: When you took the stock or bought it, or whatever it is, from your customers, you didn't get a commission on that?

Q At Woodcock.

A At Woodcock or at Advest? When I bought the stock originally for my customers, I got it on going commission.

THE COURT: At Advest, when they sold the stock to you, didn't you make commission on that end of the transaction?

THE WITNESS: No. Could you explain what you mean, when they sold the stock to me? My customers selling me the stock?

THE COURT: When you made the call in April to them and getting stock to sell to Competitive, at that point, that was while you were at Advest?

THE WITNESS: No. In doing this transaction, the customers sold their stock at \$6 1/2 a share. Let's assume that one customer had only 100 shares, to make it

1 easier. He received, when it was all said and done, \$650.

2 There was nothing deducted from that. He sold the stock at  
3 6 1/2. He received \$650. That is it.

4 Q No commission?

5 A No commission, no other charges. When Competitive  
6 bought at 6 3/4, they paid to Advest \$675, one hundred shares.

7 THE COURT: So the commission for the transaction  
8 was 25 cents a share?  
9

10 THE WITNESS: Which was probably about one-third  
11 the regular on-going commission, if it had been charged as  
12 a commission.

13 Q And when you bought -- His Honor inquired,  
14 when you bought originally while you were at Woodcock, that  
15 was on an agency basis?

16 A Yes.

17 Q And it was the standard commission?

18 A Yes.

19 Q Did you get anything else at the time other than  
20 the standard commission?

21 A No.

22 Q At any time in any transaction involving Fire  
23 Fly or any of your customers, did you ever receive any other  
24 money than what you have just told us about?

25 A No.



Q Would that be true for all the transactions in anything recommended by Yamata?

A That is correct.

Q Were you aware at any time of anything at all improper in the distribution of Fire Fly?

MR. DEVINE: Objection. It calls for a conclusion.

THE COURT: No, it doesn't. He asked him if he was aware.

A No.

Q Exhibit W, Mr. Engelbach, has got the pink sheets. Let's just go and pick it up at May 13.

A It is very hard to find the date. There is no way I will be able to come up with a date on these things.

Q I think they are in order.

A There is not a date on the first section here.

MR. DEVINE: Your Honor, we will stipulate with counsel as to the dates of each of these pink sheets. We have no dispute with respect to the dates. We could add that hereafter and stipulate it and these things speak for themselves. I don't see why we have to read them in the record.

THE COURT: I think that is true, Mr. Walker. Mr. Devine said he will stipulate as to the dates. You can

pencil it in.

MR. WALKER: I did have some questions from the witness, Your Honor, starting with the date at which, according to Defendant's M, the board directed the sale of Fire Fly.

Perhaps we can stipulate on that?

THE COURT: You ought to. There is no stipulation in terms of what the pink sheets as of a particular day. I don't see why there should be any difficulty with that.

MR. WALKER: I would submit subject to cross-examination by my colleague, Mr. Devine, that the stock was directed to be sold as reflected in the minutes of the board of directions meeting, Defendant's Exhibit M, and that in fact they were sold as a block on May 19, 1971 at the price of, I believe it is --

MR. DEVINE: If the pretrial order does not contain a stipulated fact as to the date of sale, we can add one. I don't know what it is off hand. I believe it is in the pretrial order.

MR. WALKER: Yes, it is.

It would appear also from Defendant's Exhibit W following that date that Fire Fly traded at prices up to \$6 a share --

MR. DEVINE: This is argument.

1 MR. WALKER: I am willing to go through this  
2  
3 with the witness but I don't think it is argument. It is  
4 either a fact or it isn't.

5 MR. DEVINE: It is either in the pink sheets or  
6 it isn't and I stipulate they are accurate. they are in  
7 evidence.

8 THE COURT: I think Mr. Devine has indicated  
9 that you and he will pencil in the dates on each of the  
10 pink sheets so I will be in a position to know that, and  
11 whatever is there, is there.

12 MR. WALKER: The claim is, as made in my pretrial  
13 order, is that the manner in which it was sold at any loss  
14 was a result of the manner in which Competitive dumped this  
15 on the market rather than there being anything at all  
16 intrinsically wrong with the stock. That is the claim.

17 THE COURT: That is your claim?

18 MR. WALKER: Yes, and it is also borne out by  
19 plaintiff's own trader.

20 THE COURT: It appears to me that Mr. Devine is  
21 right. That is argument, based on your amassing of the  
22 facts.

23 MR. WALKER: I think it would be helpful to have  
24 some sort of expert opinion on the proper way to sell --

25 THE COURT: That question hasn't been asked. You



1 have been asked what the price was at a certain date and  
2 whether it went up or down.  
3

4 Ask him that question.

5 BY MR. WALKER:

6 Q Mr. Engelbach, the prospectus which is in evi-  
7 dence here, I believe indicates that the issue of Fire Fly  
8 was 100,000 shares, and that 23,000 of those shares were  
9 sold by Competitive Assocs. on May 19, 1971. Are you able  
10 to give us an opinion as to whether selling 23,000 shares  
11 at below what the stock had been trading for as an appropri-  
12 ate way to sell such a percentage of an over-the-counter  
13 security?

14 MR. DEVINE: Objection to the form of the  
15 question.

16 A Absolutely not.

17 MR. DEVINE: First, the witness has not been  
18 qualified as an expert in the trading of over-the-counter  
19 securities. Indeed, he has indicated he has been a com-  
20 mission salesman and not a trader, and therefore I don't  
21 think he has the requisite expertise.

22 Secondly, the form of the question, eliciting  
23 expert testimony, is deficient.

24 THE COURT: One part of the question -- is it  
25 a fact that on May 19 they sold at a price that was lower than

the pink sheets demonstrated for that day and the day after?

MR. WALKER: Yes. A price lower than the pink sheets disclosed and lower than it had been traded thereafter, according to Exhibit W.

THE COURT: The objection to the form of the question is appropriate and the objection is sustained.

Q Mr. Engelbach, are you able to give us an opinion on the appropriate way, if one had 23,000 shares of a 100,000 share issue of an over-the-counter security as to the proper way to sell that?

MR. DEVINE: I think that is the same question and I again make an objection as to asking, number one, an unqualified expert, and even if he is qualified, to ask him what is an appropriate way. That is not the kind of testimony that can be elicited from an expert within the context of this case.

THE COURT: I agree with that. You don't understand what that means.

Isn't the question what the effect on the market value of the stock in selling 23,000 of 100,000 shares of stock at one time, the effect it would have? Isn't that what the issue is?

MR. WALKER: I think that states it better.

THE COURT: Even at that, I don't know whether

Mr. Engelbach can help, but you ask that question and see if Mr. Devine objects to that.

MR. DEVINE: Your Honor, I would like to try and cut through this. I think Mr. Engelbach can't be qualified as an expert under any circumstance, here. Number one, because of his obvious interest, and, second, because he has never been a trader. A trader is a profession unto itself, and a man who has not been such, can't testify as to expertise in that field.

However, I will cut through this and I am prepared to stipulate that the fact that Competitive Assoc.s sold a block of 23,000 shares on one day did necessarily mean that they would get less than the pink sheet price on that day. That is certainly a fact which we would be happy for Your Honor to take judicial notice.

You should also take judicial notice of the fact if they had sold a 1000 shares on that same day, that once it was known, as the traders would pass around amongst themselves, that once it was known that a holder of 23,000 shares of stock had sold 1000, the market would fall out. And, indeed, a judgment was made here by Competitive that better to sell the whole block and take a discount rather than peddling it a little bit at a time.

MR. WALKER: If we are talking about experts



and qualifying, Mr. Devine can get on the stand and testify as an expert.

MR. DEVINE: I will not qualify as an expert but I will not let this man qualify as an expert. I am trying to cut through this. I think those are the facts pertaining to the sale and if they want to try to get this from Mr. Engelbach, it will be over my objection.

BY MR. WALKER:

Q Mr. Engelbach, with regard to any qualifications, have you been buying and selling securities in the over-the-counter market for your customers over the past several years?

A Yes, since I went into the business and in fact I have worked on the trading desk.

Q Would you tell us what effect would offering for sale 23,000 shares of a 100,000-share issue in one day have on the market for such an over-the-counter security?

MR. DEVINE: Objection to the form of the question.

THE COURT: I will hear it.

A If there were not a willing and ready buyer to absorb 23 percent of an issue, it would be catastrophic to the price of the stock. It would knock it down.

Q Would that be in and of itself? Would it depend on which stock it was or the intrinsic merits of the

1 stock?

2  
3 A Actually, no. If you are trying to sell 23  
4 percent of a listed stock, it would do the same thing.

5 A If a customer would like to get rid of 23,000  
6 shares of a 100,000 issue, is there any way that these  
7 shares can be marketed where it won't have such a catas-  
8 trophic effect?

9 MR. DEVINE: I take it I have a standing ob-  
10 jection to these questions of inquiring of a so-called  
11 expert witness? Your Honor, I don't mean to be difficult.  
12 My understanding is, if you are going to examine an expert,  
13 you must lay out in your questions those fact foundations on  
14 which you want the expert to opine, and every one of those  
15 fact foundations must be in the record. You must then ask a  
16 hypothetical question, based on the fact foundation.

17 THE COURT: It seems to me the first question is  
18 common sense. If you sell 23 percent of 100,000-share issue,  
19 I assume it would depress the market.

20 MR. WALKER: I am inquiring whether the customer  
21 would have any other alternative.

22 THE COURT: Isn't that obvious, too?

23 MR. WALKER: If it is obvious, I will move on.

24 THE COURT: That man sold to Competitive, as  
25 far as I understand, 4000 shares of stock. I gather they



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got it from various kinds of dealers over a period of time.

Let's move on.

MR. WALKER: If I can have your indulgence to read the questions and answers -- three questions and three answers on pages 48, 49 of the trader of Competitive Assocs., who has not been produced in this courthouse.

THE COURT: What exhibit is that?

MR. WALKER: Exhibit R. In case you have any questions --

THE COURT: I am not going to listen to that. You have it set out if you want it in the transcript to have the reporter leave a space for it. But let's move on, there is no jury here.

MR. WALKER: That is my cross-examination.

REDIRECT EXAMINATION

BY MR. DEVINE:

Q Mr. Engebach, did you ever check to see whether, indeed, Fire Fly Enterprises was a gold stock or did you just take Mr. Yamata's word for it?

A Did I go out and look at the ground?

Q Did you go out and look at the prospectus?

A Yes.

Q Does the prospectus say this is a gold stock?

A I don't remember.



Q But it is your belief today that this is a gold stock?

A It was a mining stock and it had something to do with gold.

Q Mr. Waler asked you a question if it was a mining stock and you corrected him to say no, it was a gold stock.

A I don't recall doing that.

Q It is not a gold stock, is it?

A I don't know. Are you asking me or telling me?

Q I am asking you was it ever a gold stock?

A I was under the impression it was a mining stock with interest in gold.

Q What was the source of that impression?

A Specifically, comments made to me by Yamata and Phil Kaye.

Q Did you ever check in the prospectus to see if the word "gold" was in the prospectus?

A No, I can't say that I had.

Q Come April of 1971, when you felt it appropriate for your customers to sell this stock, one of the reasons you gave was because it was a gold stock.

A I did not tell my customers they ought to sell the stock.

Q Why don't you correct us, then.

1  
2 In April of 1971, was it your belief that your  
3 customers should sell the stock at that time?

4 A Yes.

5 Q Wasn't one of the basis for that belief the fact  
6 that you have this general dislike for gold stock? Wasn't  
7 that your testimony?

8 A In part.

9 Q And between January --

10 A You asked me a question. Would you like me to  
11 finish it?

12 Q Yes, please.

13 A At the time, the customers had had the stock for  
14 almost three months, very little appreciation in it. Some-  
15 one came in who was willing to buy a block of stock. My  
16 recommendation to the customers had only a statement that  
17 there is a buyer around, are you interested in selling it.  
18 The stock has not performed the way we expected it. Do you  
19 want to sell it? Some said yes, others said no.

20 Q You are now changing your testimony. It was  
21 not the fact you have a general dislike for gold stocks  
22 that supported, even in part, your belief at that time that  
23 the stock should be sold?

24 A I never said the stock should be sold.

25 MR. WALKER: I object to the form of that



question.

THE COURT: This is all argument. I heard what Mr. Engelbach said yesterday. As the trier of the fact, I think you and Mr. Walker have to give me some credit for listening to the testimony.

Q Would you say 100 percent was little appreciation?

A No, I would say it is a lot of appreciation.

Q So if Mr. Davis bought the stock for 3 1/4 in the offering and came April three months later he could sell it for 100 percent appreciation, would you say that was a little appreciation and not good performance and therefore it should be sold?

A I did not buy the stock for Mr. Davis for 3 1/4.

Q You had no knowledge as to how much he paid for that stock?

A I am sure that I did, but that would not be the reason. My general reason for most of the accounts that had the stock was that they bought it around the 4 1/2, 5-dollar level.

Q If they only made 50 percent in three months, you didn't feel that was very good performance?

A You are using percentage. Do you think an appreciation of 5 to 6 1/2 is a lot, a point and a half is a lot? I don't, and it is not even 50 percent.



Q I will leave that for the Court to determine.

If you make 50 percent on an investment, whether it makes any difference as to the gross amount of your initial investment, of course it does, but you could still make 50 cents on every dollar. If you put \$3000 into one share of IBM --

THE COURT: Mr. Devine.

MR. DEVINE: I will withdraw that.

Q How much Fire Fly stock did Competitive Assocs. own on September 1, 1971?

A I have no knowledge.

Q Wasn't Competitive Assocs. your customer?

A That is correct.

Q Don't you think it is relevant in dealing with a customer whether they have an interest in a security they are interested in purchasing?

A It depends upon the customer.

Q In this case you didn't feel you had any obligation or indeed you had no interest in finding out whether they had a position at the time?

A I may have had an interest but the obligation is the other way around. I would be prying if I tried to ask questions as to what they are buying, How many shares do you have? All I was doing was completing an order they

1 directed to me. Any fund manager, whether it is a bank,  
2 an insurance company, a mutual fund do not like to tell  
3 people what they are doing for fear that this gets around.  
4 If they thought this stock was going to go up, they didn't  
5 want everybody running in to buy it at the same time.  
6

7 Q Did you ask Mr. Yamata whether the fund had a  
8 position in the security at that time, April 1, 1971?

9 A As I said, it is not my business.

10 Q He didn't refuse to tell you that --

11 A How are you asking me to answer a question I  
12 was never asked?

13 MR. DEVINE: Withdrawn.

14 Q At the time of the initial public offering of  
15 Fire Fly Enterprises in January 1971, did you feel it was  
16 worth \$3 1/4 per share?

17 A It was worth what anyone would pay for it.

18 Q Excuse me?

19 A I have no idea. I think if you look at the  
20 prospectus, they say the price was arrived at between nego-  
21 tiations between the underwriters and the selling stock-  
22 holders. In this case it was either individuals or the  
23 company.

24 THE COURT: Come, Mr. Engelbach. Just answer  
25 the question. The question is --



1 THE WITNESS: Yes.

2 Q Did Woodcock, Cummings, your employer at that  
3 time, think it was worth \$3 a share?  
4

5 A I have no knowledge what they thought it was  
6 worth.

7 THE COURT: They already told us they didn't want  
8 to go into the underwriting of the stock because they didn't  
9 like the company or the man that was dealing with it, one  
10 of the defendants in this case.

11 Q In the period from January 1971 through April 2,  
12 1971, do you know of any business developments with respect  
13 to Fire Fly Enterprises that could account for a 100 percent  
14 appreciation in its price?

15 A I was kept abreast of what the company was doing.  
16 The fact that people anticipated shipments and the potential  
17 dollars they may gain from whatever shipments did in fact  
18 take place. If they were on the magnitude that would in-  
19 dicate that this company is going to be very highly profit-  
20 able in the future, yes. The people buy stocks on the  
21 expectation of what is going to happen, not what happened  
22 in the past.

23 Q What kind of shipments were these that were supposed  
24 to be made, as you recall?

25 A There were supposed to be shipments made.



I don't have any idea what they amounted to in tons or ounces, or whatever you are shipping.

Q You testified that you knew Philip Kaye.

A That is correct.

Q Do you know that Philip Kaye was an owner of Fire Fly Enterprises stock?

A Yes.

Q , Do you know he shared an office with Aki Yamata?

A Yes, that is how I met him.

Q Do you know what the immediate appreciation of Mr. Kayes' stock was at the time of this offering?

A No, I do not.

Q Could that be determined just from reading the prospectus?

A I think it might be.

Q Did you give that any consideration at the time your customers purchased this stock following the offering?

A No.

Q Focusing on the offering for a minute. Some of your customers did purchase in the offering through other brokers.

A I was aware that Yamata had arranged for certain customers to purchase the stock because he thought it merited another purchase, but I cannot help them.

Q Is it your testimony that Woodcock, Cummings refused to permit you to join the selling group just to pick up the number of shares that you had firm indications for from your customers?

A I don't understand your question.

Q You had customers and you knew that Yamata was very high on the stock and you knew that arrangements were being made to have these customers purchase the stock in the offering at other brokers.

A No. I didn't know that until after we turned it down.

Q But did you know of the interest of your customers or of Yamata in the stock?

THE COURT: He already testified to that, He went to his firm at the time Constaninou approached him and his firm turned it down.

Q There would have been no risk, would there have been?

MR. WALKER: I think we are getting argumentive.

MR. DEVINE: I will make an offer of proof on this. I believe the reason that Woodcock refused to allow Mr. Engelbach to join the selling group and take stock down for his own customers, which could immediately be sold at no risk and a handsome commission to the firm, was because of

Perry Constantinou's involvement.

THE COURT: Whether they did or not, I don't know. The point is, as I understood the testimony yesterday, it was because of his involvement that they refused to underwrite it.

Q What was the difference between your going into the selling group and taking stock down for your customers as part of the underwriting? What was the difference between that and a couple of weeks later going into the after-market and buying the same stock for the same customers?

A A good question. If we bought the stock in the underwriting from Constantinou's firm and it failed, we would have a problem.

Q What problem would you have?

A If that firm did not meet its requirements of getting the stock into us or they took our money -- normally, in this particular transaction and with smaller brokerage firms, money is delivered to the underwriting firm. In this case, Constantinou's firm would have received the money before delivering the securities to us. If my firm, who did not want to deal with basically small firms for the fear at this time that if there was going to be a failure of small firms, this money would have been locked up that they had given to that small firm in such a way that they would



not be able to get it back for a long period of time or until the securities were delivered. They did not want to take that risk. That was a business risk that had to do with interfirm relationship.

For me to go out and purchase it in the open market from other more substantial firms who, if anything went wrong, would have been at a much better position to make good on it -- in fact, there are times you wouldn't even buy an over-the-counter stock trading in the after-market from a firm for fear that that firm might be going under. And, in fact, firms have gone under and caused a great deal of problems in Wall Street.

Q Is it your testimony that Woodcock didn't engage in any transactions with Provident Securities in the after-market of the stock?

A No, that is not my testimony.

THE COURT: Who is Provident Securities? Is that Constantinou?

MR. DEVINE: Yes.

A They might feel safe buying 100 shares but not 10,000. Also, if you are interested, when you buy a stock in the over-the-counter market and after-market --

MR. DEVINE: Your Honor, I move to strike this. There is no question directed to the witness.

THE COURT: All right.

Q On April 2, 1971, Advest was not a market maker in Fire Fly stock?

A That is correct.

Q Did any of your customers sell any Fire Fly stock, to the best of your knowledge, prior to April 2, 1971?

A I don't remember.

Q For the most part, they all sold some of their stock on April 2, 1971; is that correct?

A Some of them sold on April 2, yes.

Q Getting at the transaction that actually occurred on April 2, 1971, do you have any understanding or any information with respect to Yamata did not arrange a direct sale from Davis to Competitive Assocs.?

A The logistics and the paperwork involved, it would be impossible. I don't know that the fund would in fact want to buy from an individual. Does Competitive buy generally from an individual?

Q Yes.

A Five hundred-share blocks?

Q I am asking you.

A They would have if the individual had 20,000 shares, they might arrange a direct purchase.

Q I am not asking you to speculate as to what

Competitive Assocs. would or would not do. I am asking you whether you have any knowledge as to whether Yamata made any attempt or gave you any reason why he did not attempt to arrange a direct sale from Mr. Davis, Mr. Shaw, Mr. Escava and Mr. Blumenthal to Competitive Assocs. on April 2, 1971.

A Ask that question again.

MR. DEVINE: Would you help me out.

(Record read back.)

A If I understand it, you are asking did he indicate to me in any way that he did try and arrange it?

Q I am sure the reporter won't mind reading it one more time.

THE COURT: Mr. Engelbach, he is asking you do you have any knowledge why he didn't make arrangements for them to sell directly or did he give you any reason as to why he did not.

A The answer to the question is no, I have no knowledge that he did or didn't

Q Is it your testimony that in 1969, and I think you said in 1970, that it was necessary to call Philadelphia to get an over-the-counter quote in less than 20 minutes if you were in New York?

A Are you harping on the 20 minutes? It so happened the firm I was with and the way I was set up, I



could get quotes to Yamata or other people, actually, faster than other firms that he was dealing with could get it to him. I testified to that, that is correct. In fact, that is one of the reasons he started dealing so actively with me, and he said that.

Q How is it you got these quotations so much faster than anybody he dealt with in New York could.

A The fact that I was ten feet away from our over-the-counter trading desk. The fact that our trading desk had a full set of lines, maybe 40 different telephone lines going into other brokers and it was easier for me to yell over and ask for a quote, and all they would have to do is say go in and get it. At another firm, I would have to ask a broker. The broker would have to go back and ask the over-the-counter guy, and he was busy and he wouldn't get to that quote for five or ten minutes. We were more efficient in handling the quotes, in getting the quotes.

THE COURT: In all candor, isn't there another reason? Because you were close to him socially as well and probably do things for him more readily; isn't that part of it.

THE WITNESS: No, not really, because he was providing a service.

THE COURT: All right.

Q You had a meeting with Mr. Yamata with respect to your investment in Takara Partners; is that right?

A No, not really.

Q When he announced that the fund was illiquid.

A All right, yes.

Q When was that meeting?

THE COURT: That meeting was in May.

Q In that meeting, was it your testimony that Mr. Yamata made some comments about problems with Galanis and what he had been trying to do to correct those problems?

A Yes, he did mention Galanis and the problems that existed.

Q What did he say about what his activities had been in trying to correct that problem in the preceding months?

A I don't recall that he really gave an explanation of what he was trying to do to correct that problem. I think he may have even read a statment to the limited partners that sat down, and his lawyers wouldn't let him say anything after that.

Q Did he indicate what he was trying to do to replace the funds that were involved in this problem?

A No.

Q I think you testified that at that time there

was some talk of an SEC investigation; is that correct?

A That is correct.

Q Who mentioned that?

A At the meeting you are talking about?

Q When did it first come to your attention?

A February, March.

Q Of 1971?

A Of 1971, and Yamata was the one who told me about it.

Q And he told you that this was an investigation that he was really helping out the SEC?

A That is correct.

Q Do you know whether he told a similar kind of thing to Competitive Assocs during that time period?

A I have no knowledge.

Q But you believe him, didn't you?

A Yes.

MR. WALKER: Objection.

THE COURT: Objection sustained.

Q Did you believe him?

A Yes, of course.

Q You indicated in your testimony that the sale of 23 percent of the outstanding float of the stock would have disastrous results on the market, probably. What would the



1 sale of four percent of the outstanding stock -- what  
2 effect would that have.

3  
4 A It all depends if there was a willing and able  
5 buyer standing by to buy the stock, but four percent could  
6 depress the price of the stock too.

7 Q And a buyer would know that, if he was an expert  
8 buyer, wouldn't he? That if he wanted to buy as much as  
9 four percent, he could probably get it below the market?

10 A Only if there was somebody willing to sell it.

11 Q If he knew there was somebody that could be a  
12 seller, then he would know that he could buy it below the  
13 market?

14 A He wouldn't know it until he bought it. If  
15 the stock, for one thing, if you want to buy it at 20 percent  
16 off, the stock is at five, he could put in, "I will buy  
17 4000 shares of a 100,000-share issue at four, and hope to  
18 get it.

19 Q One last thing. I want to recall you attention  
20 to yesterday's testimony in which I asked you if Mr. Yamata  
21 ever informed you of the fact that he was using your name  
22 in connection with the solicitation of funds for Seijo Assocs.  
23 Do you recall my asking you about that?

24 A Yes.

25 Q Did he ever tell you that?

1           A       Let me put it this way. I tried to get people  
2  
3 to invest in Seijo. Blumenthal was one of these people. I  
4 spoke to other people to try to get them. What Yamata did  
5 insofar as using my name, I don't understand that part of  
6 the question. Did he go out and tell somebody who I didn't  
7 know at all that Engelbach was raising money for Seijo?  
8 Is that what you are trying to get at?

9           Q       Did you have any knowledge when there came a  
10 time when Yamata told prospective investors in Seijo Assocs.,  
11 send your check or make you payment arrangements with  
12 Peter Engelbach?

13          A       No, I don't recall that that ever took place.

14          Q       You have no recollectin of such an event?

15               MR. DEVINE: May I have this document marked as  
16 Plaintiff's Exhibit 14.

17               (Pleading's Exhibit 14 marked for identification.)

18          Q       I show you Plaintiff's Exhibit 14 for identifi-  
19 cation and ask you to look at the whole letter, if you like.  
20 I direct your attention to the next to the last paragraph  
21 and tell me whether that refreshes your recollection whether  
22 Mr. Yamata used your name in connection with the solicitation  
23 of funds for Seijo Assocs.?

24               THE COURT: What is the question, refreshes his  
25 recollection?

MR. DEVINE: Yes. He just indicated he didn't recall whether his name had been used in that context.

A I don't remember getting a copy of this letter.

Q The question is whether that refreshes your recollection.

A Really, it doesn't.

MR. DEVINE: No further questions, Your Honor.

MR. WALKER: Nothing further, Your Honor.

THE COURT: Thank you, Mr. Engelbach, you may be excused.

(Witness excused.)

THE COURT: Where are we, gentlemen?

MR. DEVINE: We have only the Shaws remaining in the plaintiff's case. Mr. Marshall is out physically obtaining them at this time. They will be here, it is my understanding, they will be here promptly at 2 o'clock.

THE COURT: What about your witnesses?

MR. WALKER: If Your Honor please, I don't believe I will have anything further. The Shaws have never been deposed, and I think I may reserve the right to call a rebuttal witness. I will ask Mr. Engelbach if he will stay through their testimony and as far as I am concerned, that will end my case.

THE COURT: I must tell you gentlemen, we will



Q Would you state your residence address.

A Palm Beach, Florida.

Q Did you live in Florida in 1970 and 1971?

A Lived in Florida 1970, '71.

Q Are you in business?

A I am retired.

Q Were you retired in 1970, 1971?

A Retired in 1970.

Q Do you know Akiyoshi Yamata?

A I know Akiyoshi Yamata.

Q Can you tell the Court when you met Mr. Yamata.

A I met Mr. Yamata there. I changed brokers there.

Q When was the time?

A I think 1969, something like that. And I was advised by my son, who had friends in Wall Street that Aki was quite brilliant and that he would make a good investment counselor.

Q Did you have a face-to-face meeting with Mr. Yamata after that?

A I had a meeting with Mr. Yamata and I liked what he said, what he did.

Q Where was the meeting?

A In his office where he was at the time.

THE COURT: Am I correct, your son was or is a

stock broker?

THE WITNESS: He was and is until two weeks ago.

THE COURT: When he advised you about Mr. Yamata, he was a stock broker at that time?

THE WITNESS: Yes. His friend who had a hedge fund, suggested that Aki was one who had a lot of good ideas and that he would do well for him.

Q You said that you met in Aki Yamata's office. Where is that office.

A Down in Wall Street someplace.

Q In New York?

A Yes.

Q What was the substance of that meeting, what was said?

A He was starting a hedge fund and the partnership, a limited partnership of \$100,000 a piece.

Q What was the name of the partnership?

A Takara.

Q Did there come a time when you invested in Takara?

A I invested \$100,000 with Takara. About a week or ten days later, I liked what I had seen and the people he had contacted were prestigious people in New York City, and I thought, what is good enough for them, is good enough

for me, so I put another \$100,000 in on top of that.

Q Who were the people?

A Rockefeller interests. Mr. Burns from City Service. There was the MacDonald people, S & W Stamps. Keith Funston, who was president of the New York Stock Exchange.

Q Will you state the time again when you made these original investments.

A I think August, September 1969.

Q That is when the investments were made?

A In that time, somewhere in that area.

THE COURT: Were these two units invested in your name?

THE WITNESS: One was in my name and one was in Mrs. Shaw's name.

THE COURT: Two units?

THE WITNESS: Yes.

Q Did you receive financial reports as to how Takara was doing?

A We had reports every single month and they were supposed to have shown -- they were doing 13, 14 percent increase every month at the time.

Q Did there come a time when you reduced your investment in Takara?



1           A       About six months later I owed the bank \$50,000  
2  
3       and I wanted to pay off some of those debts and obligations,  
4       and I told Aki I want to get out of one deal, \$100,000  
5       deal, out of one limited partnership.

6           Q       Was that \$100,000 unit taken out of the partner-  
7       ship?

8           A       It was taken out. And after badgering the man  
9       there for quite some time, I finally got \$50,000 from  
10       Takara and \$50,000 from, I think it was Provident, another  
11       company, or whatever. They sent me another 50,000.

12          Q       The 50,000 you got from Takara was sent to you  
13       by way of a check drawn on Takara Partners?

14          A       Yes. The other 50,000 was a check sent to me  
15       from Provident Securities, or something like that.

16               THE COURT: When you got the checks, your under-  
17       standing was this was a return of your investment in Takara?

18               THE WITNESS: Return of my one limited partnership.

19          Q       Did Yamata give you any advice as to what you  
20       should do with the money which had been returned of Takara?

21          A       He knew I had this extra \$50,000 --

22               MR. WALKER: I think that calls for a yes or no  
23       answer.

24               THE COURT: Let's proceed.

25               MR. WALKER: We are going into hearsay, that is

only reason.

THE COURT: I think he is about to tell us what he did with the \$50,000.

MR. WALKER: He said, Did Axi tell you what to do? and the answer would be yes or no.

A He suggested that I take that \$50,000 and invest it with him and he would guarantee me a good return for my money.

MR. WALKER: I would object and move that be stricken as hearsay.

THE WITNESS: It is true.

MR. WALKER: I don't question that.

THE COURT: I don't understand that. We have been hearing talk of what Mr. Yamata said from Mr. Engelbach and several other people.

MR. MARSHALL: May I speak to that hearsay question?

THE COURT: No. I am letting it stand.

Q Did you accede to Mr. Yamata's suggestion that you should give him this \$50,000 to invest?

A Yes. I said I would go along with him and give him \$50,000.

Q What were the arrangements, if any, which you had with Yamata with respect to handling this \$50,000?

1           A       The arrangements we had with Mr. Yamata, I  
2  
3       said, "Aki, my son is a broker. How about giving my son that  
4       account and let him make a few dollars in commission?"  
5       He said, "No, I want Peter Engelbach to handle it. I do  
6       business with Peter Engelbach and I have had a nice relation-  
7       ship with him, and I just want him to handle it period."  
8       That is the only way he would do business with me.

9           Q       Did you tell Yamata your son was a broker?

10          A       Yes. I said, "Why don't you give him some  
11       business, he could handle it?" Mr. Yamata said, "No, I  
12       do business with Peter and I want this account to go through  
13       Peter, and that is the only way I will handle it period."

14          Q       What accounts did you have with Peter Engelbach?

15          A       We had two accounts. One in my name and one  
16       in Mrs. Shaw's name.

17          Q       Do you know at what brokerage firm those accounts  
18       were?

19          A       They were with Janney, Battles in Philadelphia.  
20       It started with that. Then he moved on from one place to  
21       another, and whatever place he moved on, I went along with  
22       him.

23          Q       Both accounts stayed with Peter?

24          A       The entire length of time.

25               THE COURT: How long was that?



THE WITNESS: About two years. From 1970 to 1971, something like that.

Q Did you yourself handle the trading and communications of your wife's account.

A No, Aki had discretion to buy and sell.

Q In only your wife's account?

A Both our accounts.

Q In what form did he have discretion? Was there a written authority?

A He didn't have written authority. It was just over the phone. This is the way it had to be.

THE COURT: Mr. Marshall, what difference does it make for our purpose? He had discretion.

THE WITNESS: He had discretion, both buy and sell.

Q Did Peter Engelbach have discretion to trade your accounts?

A No.

Q When trades were made in your account, were telephone calls made to you generally asking you whether or not you wished to buy or sell a certain security.

A No.

Q Can you explain, then, how trades were made, how the information was communicated to you that trades were

2 made?

3 A As I understand, Aki gave Peter Engelbach  
4 X number of shares to buy for me at a certain figure, whatever  
5 it was. He in turn purchased it or sold it, whatever it  
6 happened to be. And if I called him that day and asked him,  
7 "Is there anything new, Peter," he would either relay the messa  
8 or if I got the slips one or two days later, I would call  
9 him and ask him, "What is this all about? Give me some  
10 information about it."

11 Q Do you know whether or not Peter Engelbach ever  
12 made trades in your account without having been advised by  
13 Yamata to do so?

14 A There was Algonquin stock purchased by him and  
15 I didn't like the purchase there, and I thought there was  
16 something wrong there, and I called up Aki and asked him,  
17 "What the hell is this all about?" He said, "I don't know  
18 a thing about it, ask Peter." I called up Peter and Peter  
19 said, "I don't know anything about it, ask Aki." They passed  
20 the buck back and forth. So I don't know whether Aki there  
21 gave him jurisdiction to buy it, and according to Aki, he  
22 said no.

23 Q Did there come a time when you heard of a stock  
24 called Monarch Industries?

25 A Yes.

Q When was that?

A That was when I first took out -- when I first entered Takara, the Takara hedge fund. That was the latter part of 1969.

Q From who did you hear about Monarch?

A From Aki.

MR. WALKER: I wonder if this line of questioning is relevant. The defendant here is Advest and Mr. Engelbach was not a registered representative of Advest in 1971, and I don't believe any of the documents show this Monarch stock had anything to do with any trading carried out during any of the period.

MR. MARSHALL: Your Honor, if we could go on for three or four questions, it will become entirely clear that it is related to his other transactions.

MR. WALKER: I will withdraw the objection on that basis.

Q What did Aki say about Monarch?

A Aki said that Monarch was a solid investment. That was before I invested monies with him personally, and I had my son, who was with Byrne, Hammer & Company at the time, purchase Monarch on his say so.

Q So you did purchase Monarch?

A I purchased 5000 shares of Monarch and 100,000



bonds.

Q At a total amount of how much?

A I bought Monarch from about \$19 down to about \$8.

Q Per share?

A Per share.

Q Then subsequently what happened to your investment in Monarch?

A The stock started to go down and started to slide and slide and I said to Aki -- this is after I gave the money to him to invest on the side.

THE COURT: I have allowed a certain amount of your conversation with Mr. Yamata but it doesn't seem for us to get the picture of everything you said. It is sufficient that you tell us you bought the stock at his representation, and sold it. I think we are getting needless hearsay into this conversation with Mr. Yamata.

MR. MARSHALL: Your Honor, may I say that we are not offering conversations of Yamata for the truth of those conversations. We are not trying to prove the truth of what Yamata said.

THE COURT: They are not necessary for this phase of your case. We are not concerned in this case as to what Mr. Shaw's conversations with Mr. Yamata were. The fact is,

1 it is clear Yamata was his agent. He gave him power of  
2 attorney and he was able to buy and sell stocks at his own  
3 discretion, and he did apparently all of this, that he was  
4 doing it for the period we are talking about through Mr.  
5 Engelbach.

6  
7 Q Did you subsequently sell Monarch?

8 A I finally sold it for seven dollars.

9 Q Can you explain the circumstances and the  
10 arrangements of your sale of it.

11 A Yamata there was starting a new hedge fund called  
12 Seijo, and each share was \$50,000. He said, "You have  
13 5000 shares of Monarch. I will get you seven dollars for  
14 it, that is \$35,000. And inasmuch as I have lost a lot of  
15 money for you, I will take out of my own pocket and put in  
16 another \$15,000 so you could have limited partnership in  
17 Seijo."

18 Q Did you lose on Monarch more than the \$15,000  
19 that he made up for your investment in Seijo?

20 A He took 35,000, and Seijo was nothing. He just  
21 took the money and pocketed it, or whatever he did with it.

22 Q Did he ever make a promise or commitment to you  
23 to make up your loss?

24 A He said, "Don't worry, Jack, I will take care of  
25 all your losses. I will work it out one way or another."

MR. MARSHALL: May I have this document marked Plaintiff's Exhibit 15 for identification.

(Plaintiff's Exhibit 15 marked for identification.)

THE COURT: I thought I was supposed to understand in two or three questions what relevance Monarch has to this case. There have been about seven questions and I still don't know.

MR. MARSHALL: I think we are getting to that now, Your Honor. I can explain the chain of connection.

THE COURT: I don't want you to do it. You explain that to me in post-trial brief.

Q Did Yamata ever make that commitment to you in writing that he would make up your loss?

A Yes, he did, he made it in writing.

Q Let me show you Plaintiff's Exhibit 15.

A Yes. This is the letter that he wrote me.

"It was indeed a pleasure to see you again on Monday. I would like to reiterate in brief our conversation. First and foremost, let me assure you that your position in Monarch will be protected, as we discussed, and I intend to do the utmost to my ability to try to bring you whole again."

Q Is this a true copy of the letter you received from Yamata?

A Yes.



1 MR. MARSHALL: I offer this in evidence.

2  
3 MR. WALKER: If Your Honor please, I am com-  
4 pletely at a loss to see the relevance here and I object  
5 to it on those grounds.

6 MR. MARSHALL: Your Honor, could we do this  
7 as we have done with other documents, that is, take it  
8 subject to our going into the relevance on post-trial briefs?

9 MR. WALKER: It seems to me we are in a whole  
10 line of things that has nothing to do with this case.

11 THE COURT: I don't understand it, either. The  
12 only possible connection that I can concieve of is that is  
13 an indication to show Yamata's dealings as mirroring Engel-  
14 bach during the period he was at Advest.

15 MR. WALKER: The letter doesn't even mention  
16 Mr. Engelbach.

17 THE COURT: Let's proceed.

18 Q Did there come a time when you bought shares of  
19 Fire Fly Enterprises?

20 A Yes.

21 Q Can you explain the circumstances of that purchase.

22 A Well, the same thing. Aki told Engelbach to  
23 buy 900 shares, that I know of, and it was purchased. And  
24 I subsequently talked to Peter, or I got slips, either way,  
25 and I asked him about what is the stock all about.

Q Did Engelbach call you and ask you if you wish to make a purchase of Fire Fly Enterprises?

A No.

MR. MARSHALL: May we have this document marked Plaintiff's Exhibit 16.

(Plaintiff's Exhibit 16 marked for identification.)

THE COURT: Mr. Shaw, maybe we could cut through a lot of this. Did you or did you not make clear to Engelbach when you took out your account with him that Yamata had the authority to authorize him to buy and sell?

THE WITNESS: Yamata got Engelbach as his boy to handle the account for him but he had no discretion at all.

THE COURT: I know, but wasn't it clear to Engelbach, did you make it clear to him when you opened the account that Yamata had that authority?

THE WITNES: Yes, definitely.

Q Mr. Shaw, is this a true copy of a monthly statement you received from Woodcock, Cummings?

A Yes, that is correct.

MR. MARSHALL: I offer this.

THE COURT: I don't understand why we have to prove this. It is already in the record. Nobody disputes that the stock was bought through Engelbach for Mr. Shaw. Nobody disputes that, I don't believe.

MR. WALKER: I have no objection. This is a Woodcock statement, but I have no objection.

THE COURT: The testimony was that this stock was bought while he was at Woodcock and before he went to Advest.

MR. WALKER: It may go in as a full exhibit.

(Plaintiff's Exhibit 19 received in evidence.)

THE COURT: I don't know why we have to prove what is conceded. Let's go on to something that is in controversy.

Q Did there come a time when the shares of Fire Fly in your wife's account were sold?

A They were sold about three or four months later.

Q Can you explain the circumstances of the sales.

A They were just sold, period.

Q Did you receive a telephone call from Engelbach at the time they were sold?

A No.

Q Do you know the brokerage firm from which the shares were sold?

THE COURT: How would he know that? Whether he knows it or not, we do.

MR. MARSHALL: I don't think it has been conceded.

THE COURT: Of course it is conceded, that the



shares were sold while he was at Advest.

MR. WALKER: That is true.

THE COURT: Maybe that came out while you weren't here, Mr. Marshall.

Q Did you subsequently talk with Engelbach about your sale of the 900 shares of Fire Fly?

A I was in touch with Engelbach every day, every third day, whatever, and if I talked to him and asked him what happened, in a day or so, he would have told me. If I hadn't talked to him, I would have gotten the list, then called him.

Q Did Engelbach tell you who the purchaser was of Fire Fly Enterprises?

A No.

Q Did he tell you that the purchaser had bought a large block of shares?

A No.

Q Did he tell you that Yamata was the adviser for the purchase of the shares?

A No.

Q Did you ever authorize Engelbach or Yamata or anyone else to purchase Fire Fly shares for you at any other brokerage house?

A No.

Q I don't understand that. As I understand the testimony of Mr. Shaw, Yamata had had power of attorney to buy and sell shares at will. I don't understand that.

Q Did Yamata have power of attorney from you to buy shares at brokerage houses other than Peter Engelbach's brokerage house?

A Originally he said Peter Engelbach is doing all my buying and selling, that is it. That was the original arrangement.

Q Do you know if Yamata ever did buy shares for you at a brokerage house other than that where Peter Engelbach worked?

A At one time I got a slip there from Provident Securities and all of a sudden, I bought some stock there, and I don't know what it exactly was. And I called up Peter Engelbach and asked him what it was all about, and he didn't know anything about it. What happened was, Aki opened an account for me at Provident Securities.

MR. WALKER: I will object and move that last sentence be stricken. It is speculation.

THE COURT: I don't see why that hurts you even if it is.

Q Did you, to your knowledge, ever open a brokerage account at Chartered New England Corp.?

2 A No.

3 Q Did you ever talk with a broker named Elgin  
4 Cary?

5 A Not that I recall.

6 Q Did you have subsequent business dealings with  
7 Yamata after these transactions in Fire Fly?

8 A I bought other things from him after that, I  
9 think. I am pretty sure I have.

10 Q Did there come a time when you terminated your  
11 business relations with Yamata?

12 A Yes. I terminated business relations with him  
13 the time that he gave out a \$200,000 check to MacDonald and  
14 S & H. Stamps and the check bounced, and the whole ball of  
15 wax fell apart.

16 Q What time was that.

17 A The latter part of '71.

18 MR. MARSHALL: May we have this document marked  
19 Plaintiff's Exhibit 17.

20 (Plaintiff's Exhibit 17 marked for identification.)

21 Q Let me show you a letter that has been marked  
22 Plaintiff's Exhibit 17 for identification and ask you if that  
23 is a true copy of a letter which you wrote to Oscar Schermer?

24 A Yes.

25 Q This copy is not signed. To your knowledge,



1  
2 THE COURT: You have to answer the questions  
3 that are asked, and my real feeling about it is that your  
4 views in regard to your relationship with Mr. Yamata and  
5 Mr. Engelbach have been set forth in the record. If it wasn't,  
6 then I am certainly prepared to allow you to do that. I  
7 don't think I need to have read something that you wrote  
8 some years ago when I have you right here.

9 (Plaintiff's Exhibit 17 received in evidence.)

10 MR. MARSHALL: No more questions, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. WALKER:

13 Q With regard to Fire Fly, you realized you had,  
14 you and your wife realized profits on that purchase and  
15 sale?

16 A We bought it at 6 1/4, we sold it for 6 1/2.  
17 The profits were nil.

18 Q Certainly in the context of the type of invest-  
19 ment you were looking for, you consider that nil.

20 A If it cost six and a quarter plus your commission  
21 and you get six and a half dollars for it, you get no profit  
22 for it.

23 Q What were your investment aims at that time,  
24 capital appreciation?

25 A If we felt we had a good investment vehicle, it

1 was an investment. If we felt there was something there  
2 we wanted to make a turn on, we made a turn on it, capital  
3 appreciation.

4  
5 MR. WALKER: Thank you.

6 THE COURT: Thank you.

7 (Witness excused.)

8 THE COURT: Anything else?

9 MR. DEVINE: Your Honor, the plaintiff rests,  
10 with the exception of some additional documents which we  
11 would like to offer and some deposition transcripts which  
12 we would like to offer. I will do that now, or however  
13 you prefer. If we have defense witnesses that are sitting  
14 around the courtroom, I will be happy to do that at the  
15 end of the day, so we could get people out of here. I  
16 have about ten minutes.

17 THE COURT: Why don't you start doing it, then  
18 Mr. Walker can make up his mind whether he is going to put  
19 any witness on.

20 MR. DEVINE: I have nine pages of documents which  
21 are documents from the plaintiff's files relating to its  
22 purchases of Fire Fly Enterprises. I ask you to mark that  
23 as plaintiff's Exhibit 18 for identification and I offer  
24 it in evidence.

25 (Plaintiff's Exhibit 18 marked for identification.)

PLAINTIFF'S EXHIBIT 2

LEONARD TOBOROFF

ATTORNEY AT LAW

(212) PLAZA 2-4650

400 PARK AVENUE  
NEW YORK, N. Y. 10022

October 1, 1974

Butowsky, Schwenke & Devine, Esqs.  
230 Park Avenue  
New York, New York 10017

re; Firefly

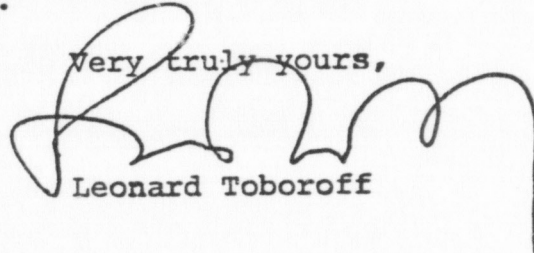
Attn: S.P. Marshall, Esq.

Dear Mr. Marshall:

Pursuant to our conversation yesterday and today, the plaintiffs (your clients) agree to settle their claims against my client (Chartered) in consideration of the sum of \$5,000.00.

Also pursuant to our conversation, I am enclosing a list of Chartered's customer accounts in Firefly together with the corresponding names and addresses.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'L. Toboroff', written over the typed name.

Leonard Toboroff

SR



PLAINTIFF'S EXHIBIT 2

85 19294	Mrs. Elsie Heller 5 Windy Hill Road Westport, Conn. 10583
85 19336	Mr. Richard G. Heller South Johnsbury Road Johnsbury, N. Y. 10853
85 19403	Miss Ronnie G. Heller 5 Windy Hill Road Westport, Conn. 10583
85 18734	Mr. Simon Kaplowitz 1011 Sheridan Avenue Bronx, N. Y. 10456
85 19335	Garson Heller 5 Windy Hill Road Westport, Conn. 10583
85 19401	Mr. John Ornstein 6105 Blvd. East West New York, N. J. 07093
85 19405	Mr. Samuel Schattner 7110 Arran Street Bethesda, Md. 20034
85 19406	Mr. Aaron Hirsch & Srotoplastics Inc. P. O. Box 107 Westport, Conn.
85 19408	Mr. Jacob Blumanthal 1333 School Lane Rydal, Pa. 19046
✓ 85 19409	Mr. Irving Lesser 20 Dike Drive Monsey, N. Y. 10952
85 19410	Mr. Ira Glotzer 1 Fox Lane Spring Valley, N. Y. 10977
✓ 85 19411	Mr. Otto Kriske 17 Richard Drive West Nyack, N. Y. 10994

PLAINTIFF'S EXHIBIT 2

✓85 19412	Mr. Howard Ackerman 7 Helen Court Spring Valley, N. Y. 10977
85 19414	Mr. William Davis Golf Digest % New York Times 229 West 43rd Street New York, New York 10036
85 19415	Mr. Jack Shaw % Mr. Norman Shaw 430 West 44th Street New York, New York 10036
85 00002	Mr. Martin Weiner 31-77 36th Street Astoria, L. I., N. Y.
85 19404	Mr. Daniel King % King & Korn 415 Lexington Inc. New York, New York
85 19240	Mr. James Hudson 191 East 76th Street Apt. 4 D New York, New York 10021
87 00145	Mr. Hoosain M. Dharmasey % Action Research Inst. 420 Lexington Avenue Room 501 New York, New York 10017
85 00287	Mrs. Ruth A. Carlstrom 136 East Main Street Springville, N. Y. 14141

# Chartered New England Corporation

90 Broad Street, New York, N. Y. 10004  
Telephone (212) 425-5050

November 1, 1974

Mr. S. Pitkin Marshall  
Butowsky, Schwenke & Devine  
230 Park Avenue  
New York, New York 10017

Dear Mr. Marshall:

In answer to your letter of October 14, 1974, please be advised that the following are the answers to the questions you have raised:

a) We have examined our files and can not find the original buy and sell tickets of the underwriting, however, we are submitting to you a copy of the underwriting sheet showing who purchased the security on the original issue.

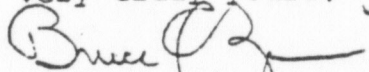
b) Buy tickets for the purchase by Competitive Associates Inc., of 6,000 shares on January 19, 1971 and of 3,000 shares on February 1, 1971 have been submitted to you, see attached.

c) You make reference to buy and sell tickets by Chartered New England Corporation, account number 84722 of 6,000 shares from Oceanography Mariculture Industries, Inc., on January 19, 1971 at 5 3/8. My records indicate no such trade taking place on that date. The only trade for 6,000 shares being the buy and sell of Fire Fly as already submitted in item b.

d) Accounts 79-84708 and 79-84722 are both trading accounts of Chartered New England Corporation. Account number 85-19419 apparently was omitted from the listing and is Mr. Guido Ullman, & Ieber and Solon Inc., 535 5th Avenue, New York, New York 10038.

Finally, I am enclosing a affidavit making a representation as to the items numerated in two and three of your letter. I hope that this will suffice in finalizing this matter.

Very truly yours,



Bruce C. Zins  
Secretary, Treasurer

BCZ:mre  
Encl.

-219a-



Underwriting Account - 04-020-1-5 000

Selling Group Account - 04-05021-1-4 000

PLAINTIFF'S  
EXHIBIT 3NAME OF SECURITY FIRE FLY ENTERPRISES INCNO. OF SHARES 16.600 PRICE 3 1/4 CONCESSION 15 Cents

TRADING DATE \_\_\_\_\_ SETTLEMENT DATE \_\_\_\_\_

MANAGING UNDERWRITER Provident Securities Inc

TAKEN DOWN FROM \_\_\_\_\_

NO. OF SHARES	CUSTOMER #	SALESMAN #	GROSS CONCESSION	NET TAXES	Gross 50% NET CONCESSION
200	85-00002-1.7.	003	24.00	2.50	21.50
100	85-18734-1.4.	003	12.00	1.25	10.75
200	85-00087-1.3.	003	24.00	2.50	21.50
500	85-19415-1.8.	003	60.00	6.25	53.75
500	85-19414-1.9.	003	60.00	6.25	53.75
1000	85-19408-1.7.	003 J. B. B.	120.00	12.50	107.50
3000	85-19240-1.9.	003 J. H. B.	360.00	37.50	322.50
1500	85-19409-1.6.	013	180.00	18.75	169.50
1500	85-19410-1.3.	013	180.00	18.75	169.50
1500	85-19411-1.4.	013	180.00	18.75	169.50
2000	85-19412-1.1.	013	240.00	25.00	215.00
500	85-19404-1.1.	013	60.00	6.25	53.75
500	85-19401-1.4.	013	60.00	6.25	53.75
300	85-19294-1.4.	013	36.00	3.75	32.25
200	85-19403-1.4.	013	24.00	2.50	21.50
200	85-19336-1.4.	013	24.00	2.50	21.50
300	85-19335-1.5.	013	36.00	3.75	32.25
400	85-19405-1.0.	013	48.00	5.00	43.00
1000	85-19406-1.9.	013	120.00	12.50	107.50
1200	87001445-1.1.	013	148.00	15.00	133.00
16.600	overide	044	332.00	—	332.00
					2145.25
		003- 571.25			
		013- 1222.00			
		044- 332.00			
		2145.25			

Ex 4

**Charterd New England Corporation**  
 80 BROAD STREET, N.Y., N.Y. 10004, TELEPHONE: (212) 425-5050

CLEARING BY AND ACCOUNT WITH DISPOSITION  
 FIVE CO'S & CO. #113 CUSTOMER  
 501 N. AVENUE, NEW YORK, N.Y. 10022  
 TEL: (212) 980-3030

500

**FIRE FLY ENTERPRISES INC**  
 PROSPECTUS ENCL

3 1/4

PRINCIPAL	INTEREST	COMMISSION	STATE TAX	SEC. FEE	STAMP	NET AMOUNT
162500						162500

TRADE DATE	SETTLEMENT DATE	ISSUE NO.
010671	011371	221

303-1

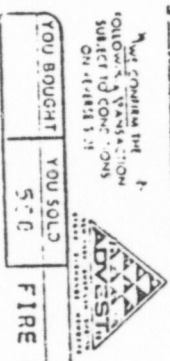
MR WILLIAM DAVIS  
 GULF DIGEST  
 C/O NEW YORK TIMES  
 229 WEST 43rd STREET  
 NEW YORK, NEW YORK 10036

JUN 11 1971

REMITTANCE SHARE & COMMISSION MAIL TO:  
 DRYFOOS & CO.  
 15 MAIDEN LANE  
 N.Y. N.Y. 10038

THIS STATEMENT IS COMPUTED FOR PAYMENT IN NEW YORK FUNDS ON SETTLEMENT DATE. IF PAYMENT IS MADE AT A LATER DATE, ADDITIONAL INTEREST TO DATE OF PAYMENT MAY BE CHARGED. NAME OF OTHER BROKER OR TIME OF EXECUTION FURNISHED ON REQUEST.

RETAIN THIS COPY FOR YOUR INCOME TAX RECORDS



NEWBURGER & CO. DISC  
 140 N. WALNUT ST. PHILA. 19102  
 SECURITY DESCRIPTION AND NUMBER  
 150242  
 PRICE  
 4 3/5

TRADE DATE AND NO.	PRINCIPAL	COMMISSION	TAX	INTEREST	S.E.C. FEE	INSURANCE OR HANDLING	POSTAGE OR MAIL
06/14/71 16023	2187.50	71.96					

MR WILLIAM DAVIS  
 65 W BROTHER DRIVE  
 GREENWICH CONN  
 06930

329-16-18EC

YOUR ACCOUNT NO.	OFF. REG. A/B/C/D	CODES
55057329	1 50 34	1 1 7

ODD LOT LICENSE AS REQUIRED BY THE SECURITIES AND EXCHANGE COMMISSION. On other than round lots (initially 100 Shares) on all exchanges an amount has been added to the price on purchase or deducted on sale. On the New York Stock Exchange this amount is 25¢ per share for stocks selling at \$55 or above, and 12 1/2¢ for stocks selling below. In all other cases an explanation will be provided on request.

215.60



NEWBURGER & CO. DIVISION  
1401 WALNUT ST., PHILADELPHIA, PENNA. 19102  
SECURITY DESCRIPTION AND NUMBER  
FIRE FLY ENTERPRISES 198242 PRICE 6 1/2

TRADE DATE AND NO. 04/02/77 16071  
PRINCIPAL 4550.00  
COMMISSION  
TAX  
INTEREST  
S.T.C. FEE  
INSURANCE  
POSTAGE  
ON INVOICING  
OR MISC.

MR WILLIAM DAVIS  
65 W BROTHER DRIVE  
GREENWICH CONN 06830  
329-16-0880  
YOUR ACCOUNT NO. 50087329  
OFF. REP. A R C  
CODES 1 50 58 N 2 7  
SEE REVERSE SIDE FOR EXPLANATION OF CODES

RETAIN THIS COPY FOR YOUR INCOME TAX RECORDS

04/05

04/12/77

4550.00

GOOD LOT LICENSE AS REQUIRED BY THE SECURITIES AND EXCHANGE COMMISSION. On other than round lots (generally 100 shares) on all exchanges an amount has been added to the price on purchases or deducted on sales. On the New York Stock Exchange this amount is 1/32% for stocks selling at \$55 or above, and 1/32% for stocks selling below. In all other cases an explanation will be provided on request.

PLAINTIFF'S EXHIBIT 5

QUANTITY	FOR SALE	DESCRIPTION	UNIT PRICE	TRADE DATE	SETTLE DATE
200		FIRE FLY ENTERPRISES INC	6.1250	2/02/77	2/13/77
GROSS AMOUNT					1235.00
COMMISSION					
SEC TAX					
STATE TAX					
SEC REG					
POST FNS					
SUBTOTAL					
MOB INTEREST					
REC'D INTEREST					
ONE US					
ONE CAN					
SVC					
OTHER					
G49					
NET AMOUNT DUE US					
NET AMOUNT DUE YOU					

Woodcock Cummings Taylor & French  
INCORPORATED  
Business Founded 1812  
NEW YORK STOCK EXCHANGE  
PHILADELPHIA BALTIMORE WASHINGTON  
STOCK EXCHANGE

TO MR WILLIAM DAVIS  
65 WEST BROTHER DRIVE  
GREENWICH CONN 06830  
13-12-CTC-329160880  
271 1335 11  
ACCOUNT TYPE

OTHER OFFICES LISTED ON REVERSE SIDE

WE THANK YOU FOR THIS ORDER AND SUGGEST THIS CONFIRMATION BE RETAINED FOR TAX PURPOSES

QUANTITY	FOR SALE	DESCRIPTION	UNIT PRICE	TRADE DATE	SETTLE DATE
500		FIRE FLY ENTERPRISES INC	6.1250	2/02/77	2/09/77
306250					

MEMBERS  
NEW YORK STOCK EXCHANGE  
PHILADELPHIA BALTIMORE WASHINGTON  
STOCK EXCHANGE

222a-



PLAINTIFF'S EXHIBIT 5

TO MR WILLIAM DAVIS

6 WEST SCEPTER DRIVE  
PHILADELPHIA, PENNA. 19102  
TELEPHONE 2-5516-350

271 1335 11

OTHER OFFICES LISTED ON REVERSE SIDE

PHILADELPHIA, PENNA. 19102  
1500 Chestnut St.  
(215) 569-2300

WE THANK YOU FOR THE OFFER OF STOCK  
CONFIRMATION IS RETURNED FOR INFORMATION



3119  
01  
506

QUANTITY		TO ORDER		TO SOLD		DESCRIPTION		UNIT PRICE		TRADE DATE		SETTLE DATE	
500						FIRE FLY ENTERPRISES, INC		6.1250		2/22/71		2/25/71	
306650										306650			
GROSS AMOUNT		COMMISSION		FED TAX		STATE TAX		SEC FTS		POST. CHGS		NET AMOUNT DUE US	

X2242X

WAVE

BUY ORDER

M

LONG-SELL ORDER

CC. IGT.		QUANTITY 1-7		SECURITY DESCRIPTION 1										LMT. PRICE / MKT.		EXCH. PRICE 2-15			
1		500		LONG		Fuel										TYPE OF ORDER		6754	
SEC. NO. / SYMBOL 16-21				CHECK BELOW IF APPROPRIATE				ZZ-ACCOUNT NUMBER-23				31 TYPE		TR. DATE 31-33		TRADE NO. 34-37			
172212				NEW ACCT. X		CHANGE ADDRESS		PERM C CODE		500840791				87		8032			
CXL 23				CUSTOMER NAME										MEMO		SELT. DATE 37-41			
Man. Calum F. Borchman				433										GTS. Dr		1915			
ADDRESS (NEW OR CHANGE ONLY)				EC 506 Borchman apt 0										3x5 ONLY					
SOCIAL SECURITY OR ID. NUMBER				✓ IF ID.		ZIP CODE				INSTRUCTIONS				24					
AF										BUY 1				DIV 32					
DEALER OTHER SIDE - NAME AND NUMBER								MKT. 51		TRANS. 52		SPCL. C 53		SPCL. D 54		SPCL. 55			
42				TYPE 50				M N						STO 58					
SPCL. 60		COMMISSION 61-65		CONCESSION 67-72				MISC. CODE 73		MISC. AMOUNTS 74-79				VALUED		SPCL. 80			
000000																			
ADDITIONAL INFORMATION - 10 CHARACTERS																			



PLAINTIFF'S EXHIBIT 9

FORM 1 515-2		LONG-SELL ORDER																									
C.C. IC		QUANTITY 3-7		SECURITY DESCRIPTION						LIVE PRICE / JUNE		EXEC. PRICE 3-15															
1		900		LONG		L.F.A.						TYPE OF ORDER		FO													
SEC. NO., SYMBOL 15-21				CHECK BELOW IF APPROPRIATE				ZZ-ACCOUNT NUMBER-27				37 TYPE		TR. DATE 31-33		TRADE NO: 34-37											
175642		NEW ACCT.		RANGE ADDRESS		PERM C CODE CHANGE		505337101				505337101		505337101		505337101											
CAL 33		CUSTOMER NAME								MEMO				DETL. DATE 37-41													
		S.H.W.								433-				6705													
ADDRESS (NEW OR CHANGE ONLY)														(3 x 5 ONLY)													
SOCIAL SECURITY OR ID. NUMBER														✓ IF ID.		ZIP CODE		INSTRUCTIONS				TOL					
DEALER OTHER CODE - NAME AND NUMBER														M. 51		TRANS. 52		SPCL. C 53		SPCL. D 54		SPCL. MAIL 55		OFF. & R.R. 55-59			
SPCL. CODE 60														COMMISSION 61-65		CONCESSION 67-72		MISC. CODE 73		MISC. AMOUNTS 74-79		SOLICITATION 80		SPCL. TPLR 81		PREFIGURE	
ADDITIONAL INFORMATION - 10 CHARACTERS																											

FORM NO. SLS-2										LONG SELL ORDER									
C.C. CT.		QUANTITY 3-7		SECURITY DESCRIPTION						UNIT PRICE 2-4T		EXCH. PRICE 3-15							
1		100		Tosco Fly								6-1/4							
SEC. NO./SYMBOL 16-21				CHECK BELOW IF APPROPRIATE				22-ACCOUNT NUMBER-29		33 TYPE		TR. DATE 31-33		TRADE NO. 34-37					
177012		NEW ACCT. <input checked="" type="checkbox"/>		CHANGE ADDRESS: <input type="checkbox"/>		PERM. CODE CHANGE: <input type="checkbox"/>		501164171		7/1/67		7/1/67		7/1/67					
CKL 33				CUSTOMER NAME						M.F.I.O.		SETL. DATE 33-34							
Mr. A. L. A. K. K. K.										433-		G.T. Neg							
ADDRESS (NEW OR CHANGE ONLY)				13 x 5 (OILY)															
Tosco Fly Market Park, N.Y.																			
SOCIAL SECURITY OR ID. NUMBER				✓ IF ID.		ZIP CODE		INSTRUCTIONS											
15571784																			
DEALER OTHER SIDE - NAME AND NUMBER						MAT. 51		TRANS. 52		SPL. C 53		SPL. D 54		SPL. E 55					
42				TYPE 52		M		N											
SPL. COM. 60		COMMISSION 61-65		CONCESSION 67-72		MISC. CODE 73		MISC. AMOUNTS 74-79		SOLICITOR		SPL. TYPE 80		PREFIGURE					
ADDITIONAL INFORMATION - 30 CHARACTERS																			



PLAINTIFF'S EXHIBIT 9

FORM NO. SLS-2		LONG SELL ORDER										
CC	CT	QUANTITY 3-7	LONG	SHORT	SECURITY DESCRIPTION	LMT. PRICE / MKT.	EXEC. PRICE 6-13	TYPE OF ORDER			TR. DATE 31-33	TRADE NO. 34-37
1		300			Fire Fly Enterprises		6-1/2					
SEC. NO. / SYMBOL 15-21		CHECK BELOW IF APPROPRIATE				22-ACCOUNT NUMBER-29		30 TYPE		TR. DATE 31-33		TRADE NO. 34-37
177242		NEW ACCT. <input type="checkbox"/> CHANGE ADDRESS <input type="checkbox"/> PERM C CODE CHANGE <input type="checkbox"/>				500357361						
CAL 33		CUSTOMER NAME				MEMO		SETL. DATE 33-41				
		Belle				433-		670				
ADDRESS (NEW OR CHANGE ONLY)		(3 x 5 ONLY)										
SOCIAL SECURITY OR ID. NUMBER		✓ IF ID.		ZIP CODE		INSTRUCTIONS						
DEALER OTHER SIDE - NAME AND NUMBER		42		TYPE 50		MKT. 51		TRANS. 52		SPCL. C 53		SPCL. D 54
						M N						OFF. & R.R. 56-59
SPCL. CODE 60		COMMISSION 61-65		CONCESSION 67-72		MISC. CODE 73		MISC. AMOUNTS 74-79		SOLICITERS 80-83		SPCL. 84
												PREFIGURE
ADDITIONAL INFORMATION - 30 CHARACTERS												

FORM NO. SLS-2		LONG SELL ORDER										
CC	CT	QUANTITY 3-7	LONG	SHORT	SECURITY DESCRIPTION	LMT. PRICE / MKT.	EXEC. PRICE 6-13	TYPE OF ORDER			TR. DATE 31-33	TRADE NO. 34-37
1		100			Fire Fly		6-1/2					
SEC. NO. / SYMBOL 15-21		CHECK BELOW IF APPROPRIATE				22-ACCOUNT NUMBER-29		30 TYPE		TR. DATE 31-33		TRADE NO. 34-37
177242		NEW ACCT. <input checked="" type="checkbox"/> CHANGE ADDRESS <input type="checkbox"/> PERM C CODE CHANGE <input type="checkbox"/>				500884261						
CAL 33		CUSTOMER NAME				MEMO		SETL. DATE 33-41				
		Mr. Herman Escam				433-		670				
ADDRESS (NEW OR CHANGE ONLY)		(3 x 5 ONLY)										
SOCIAL SECURITY OR ID. NUMBER		✓ IF ID.		ZIP CODE		INSTRUCTIONS						
DEALER OTHER SIDE - NAME AND NUMBER		42		TYPE 50		MKT. 51		TRANS. 52		SPCL. C 53		SPCL. D 54
						M N						OFF. & R.R. 56-59
SPCL. CODE 60		COMMISSION 61-65		CONCESSION 67-72		MISC. CODE 73		MISC. AMOUNTS 74-79		SOLICITERS 80-83		SPCL. 84
												PREFIGURE
ADDITIONAL INFORMATION - 30 CHARACTERS												

PLAINTIFF'S EXHIBIT 9

FORM 1 SLS-2

LONG SELL ORDER

CC. I.C.T.	QUANTITY 3-7	LONG	SECURITY DESCRIPTION	LMT. PRICE / MKT.	EXEC. PRICE 8-15
1	100		Fox Fly		6-17
SEC. NO. / SYMBOL 15-21			CHECK BELOW IF APPROPRIATE	22-ACCOUNT NUMBER-29	TR. DATE 31-33
177212	NEW ACCT. X	CHANGE ADDRESS	PERM. C CODE CHANGE	50432491	1-2
CAL 38			CUSTOMER NAME	MEMO	ISFL DATE 33-41
			Mr. Barry Leonard	433-	1
ADDRESS (NEW OR CHANGE ONLY)			GTO Del		
1540 E. Main St. Apt. 24-A			1003		
SOCIAL SECURITY OR I.D. NUMBER			WIF ID	ZIP CODE	INSTRUCTIONS
171301533					BUY 9 1 1 9
DEALER OTHER SIDE - NAME AND NUMBER			42	TYPE 50	5052
SPCL. CODE 60			COMMISSION 61-65	CONCESSION 67-72	MISC. CODE 73
000000					
ADDITIONAL INFORMATION - 30 CHARACTERS					

FORM NO. SLS-2

LONG SELL ORDER

CC. I.C.T.	QUANTITY 3-7	LONG	SECURITY DESCRIPTION	LMT. PRICE / MKT.	EXEC. PRICE 8-15
1	200		Fox Fly		6-17
SEC. NO. / SYMBOL 15-21			CHECK BELOW IF APPROPRIATE	22-ACCOUNT NUMBER-29	TR. DATE 31-33
177212	NEW ACCT. X	CHANGE ADDRESS	PERM. C CODE CHANGE	504	1-2
CAL 38			CUSTOMER NAME	MEMO	ISFL DATE 33-41
			Mr. Barry Leonard	433-	1
ADDRESS (NEW OR CHANGE ONLY)			GTO Del		
20 South G. St.			1003		
Pittsburgh Pa. 15211					
SOCIAL SECURITY OR I.D. NUMBER			WIF ID	ZIP CODE	INSTRUCTIONS
19977-1075					BUY 9 1 1 9
DEALER OTHER SIDE - NAME AND NUMBER			42	TYPE 50	5052
SPCL. CODE 60			COMMISSION 61-65	CONCESSION 67-72	MISC. CODE 73
000000					
ADDITIONAL INFORMATION - 30 CHARACTERS					

# PLAINTIFF'S EXHIBIT 9

FORM NO. 515-2

## LONG SELL ORDER

CC, IC, F	QUANTITY 3-7	LONG	SECURITY DESCRIPTION	INT. PRICE / INT.	EXEC. PRICE 8-5
1	200	LONG	Free Fly		6 1/2
SEC. NO. / SYMBOL 15-21			CHECK BELOW IF APPROPRIATE	22-ACCOUNT NUMBER-29	TR. DATE 31-33
178242	NEW ACCT. X	CHANGE ADDRESS	PERM. C CODE	501006431	1/1
CUSTOMER NAME			MEMO		
ADDRESS (NEW OR CHANGE ONLY)			433- 670 1/2 E. C.		
SOCIAL SECURITY OR ID. NUMBER			ZIP CODE	INSTRUCTIONS	
1449-2 7975				8 9 1 1 9	
DEALER OTHER SIDE - NAME AND NUMBER			MKT. 51 TRANS. 52 SPCL. C 51 SPCL. D 54 OFF. 55		
42			TYPE 53 M N		
SPCL. CODE 60	COMMISSION 61-65	CONCESSION 67-72	MISC. CODE 73	MISC. AMOUNTS 74-79	
ADDITIONAL INFORMATION - 10 CHARACTERS					

FORM NO. 515-2

## LONG SELL ORDER

CC, IC, F	QUANTITY 3-7	LONG	SECURITY DESCRIPTION	INT. PRICE / INT.	EXEC. PRICE 8-5
1	300	LONG	Free Fly		6 1/2
SEC. NO. / SYMBOL 15-21			CHECK BELOW IF APPROPRIATE	22-ACCOUNT NUMBER-29	TR. DATE 31-33
178242	NEW ACCT. X	CHANGE ADDRESS	PERM. C CODE	500758201	1/1
CUSTOMER NAME			MEMO		
ADDRESS (NEW OR CHANGE ONLY)			433- 670 1/2 E. C.		
SOCIAL SECURITY OR ID. NUMBER			ZIP CODE	INSTRUCTIONS	
				8 9 1 1 9	
DEALER OTHER SIDE - NAME AND NUMBER			MKT. 51 TRANS. 52 SPCL. C 51 SPCL. D 54 OFF. 55		
42			TYPE 53 M N		
SPCL. CODE 60	COMMISSION 61-65	CONCESSION 67-72	MISC. CODE 73	MISC. AMOUNTS 74-79	
ADDITIONAL INFORMATION - 10 CHARACTERS					



PLAINTIFF'S EXHIBIT 9

FORM NO. 513-2

LONG SELL ORDER

C.C. I.C.T. 1		QUANTITY 3-7		SECURITY DESCRIPTION				EST. PRICE / UNIT		EXEC. PRICE 8-13	
1		100		100 Fly S. Intercom							
SEC. NO. / SYMBOL 15-21		CHECK BELOW IF APPROPRIATE				22-ACCOUNT NUMBER-29		TR. DATE 31-33		TRADE NO. 31-33	
172342		ACCT. <input checked="" type="checkbox"/> X				500873291		7/1		6071	
CXL 32		CUSTOMER NAME				MEMO		STPL DATE 33-			
		J. William Davis				433-					
ADDRESS (NEW OR CHANGE ONLY)		65 West Brother Drive				(3 x 5 ONLY)		GT 2212			
SOCIAL SECURITY OR ID. NUMBER		V.I.P. ID.		ZIP CODE		INSTRUCTIONS					
320160850						BUY 9/1					
DEALER OTHER SIDE - NAME AND NUMBER						MKE. 51		TRANS. 52		SPCL. C 53	
						M N					
SPCL. C 60		COMMISSION 61-65		CONCESSION 67-72		MISC. CODE 73		MISC. AMOUNTS 75-79		PREFIGURE	
000000											

FORM NO. 513-2

LONG SELL ORDER

C.C. I.C.T. 1		QUANTITY 3-7		SECURITY DESCRIPTION				EST. PRICE / UNIT		EXEC. PRICE 8-13	
1		250		100 Fly S. Intercom							
SEC. NO. / SYMBOL 15-21		CHECK BELOW IF APPROPRIATE				22-ACCOUNT NUMBER-29		TR. DATE 31-33		TRADE NO. 31-33	
172342		ACCT. <input checked="" type="checkbox"/> X				500908281		7/1		6071	
CXL 32		CUSTOMER NAME				MEMO		STPL DATE 33-			
		J. William Davis				433-					
ADDRESS (NEW OR CHANGE ONLY)		100 West Brother Drive				(3 x 5 ONLY)		GT 2212			
SOCIAL SECURITY OR ID. NUMBER		V.I.P. ID.		ZIP CODE		INSTRUCTIONS					
112017747						BUY 9/1					
DEALER OTHER SIDE - NAME AND NUMBER						MKE. 51		TRANS. 52		SPCL. C 53	
						M N					
SPCL. C 60		COMMISSION 61-65		CONCESSION 67-72		MISC. CODE 73		MISC. AMOUNTS 75-79		PREFIGURE	
000000											

PLAINTIFF'S EXHIBIT 9

FORM NO. SLS-2

LONG SELL ORDER

CC. I.C.F.	QUANTITY 3-7	SECURITY DESCRIPTION	LMT. PRICE / MKT.	EXEC. PRICE 8-15
1	500	7-17		6 1/2
SEC. NO. / SYMBOL 15-21		CHECK BELOW IF APPROPRIATE	22-ACCOUNT NUMBER-29	33 TYPE
173212		NEW ACCT. <input checked="" type="checkbox"/> CHANGE ADDRESS <input type="checkbox"/> PERM. C CODE CHANGE <input type="checkbox"/>	507673181	
CXL 13 CUSTOMER NAME			MEMO	
Dr. Emanuel P. Tress			433- GTD 1/2	
ADDRESS (NEW OR CHANGE ONLY)			(3 x 5 ONLY)	
7600 Old York Rd. Schaumburg, Pa. 19117				
SOCIAL SECURITY OR ID. NUMBER		✓ IF ID.	ZIP CODE	INSTRUCTIONS
162208859				BUY 9 1/2
DEALER OTHER SIDE - NAME AND NUMBER		MKT. 51 TRANS. 52 SPCL. C 53 SPCL. D 54 SPCL. E 55 OFF. & R.R. 56-59		
42		TYPE 53 M N		
SPCL. COM. 60	COMMISSION 61-66	CONCESSION 67-72	MISC. CODE 73	MISC. AMOUNTS 74-79
	0000000			
ADDITIONAL INFORMATION - 30 CHARACTERS				

FORM NO. SLS-2

LONG SELL ORDER

CC. I.C.F.	QUANTITY 3-7	SECURITY DESCRIPTION	LMT. PRICE / MKT.	EXEC. PRICE 8-15
1	200	True Fly Enterprises		1 1/2
SEC. NO. / SYMBOL 15-21		CHECK BELOW IF APPROPRIATE	22-ACCOUNT NUMBER-29	33 TYPE
177212		NEW ACCT. <input checked="" type="checkbox"/> CHANGE ADDRESS <input type="checkbox"/> PERM. C CODE CHANGE <input type="checkbox"/>	504605181	
CXL 13 CUSTOMER NAME			MEMO	
H. Larry Poobin			433- GTD 1/2	
ADDRESS (NEW OR CHANGE ONLY)			(3 x 5 ONLY)	
8317 Turners Rd. Schaumburg, Pa. 19117				
SOCIAL SECURITY OR ID. NUMBER		✓ IF ID.	ZIP CODE	INSTRUCTIONS
210352845			19117	BUY 9 1/2
DEALER OTHER SIDE - NAME AND NUMBER		MKT. 51 TRANS. 52 SPCL. C 53 SPCL. D 54 SPCL. E 55 OFF. & R.R. 56-59		
42		TYPE 53 M N		
SPCL. COM. 60	COMMISSION 61-66	CONCESSION 67-72	MISC. CODE 73	MISC. AMOUNTS 74-79
	0000000			
ADDITIONAL INFORMATION - 30 CHARACTERS				



50 58

10502621-0

1. ACCOUNT TITLE  
(Include Mr., Mrs., Miss)

Competitive Assoc., Inc. (see page 2 for proper inscription)

2. RESIDENCE ADDRESS

(no., street, city, state, zip code)  
MAILING ADDRESS 9601 Wilshire Blvd., Beverly Hills, California 90210  
(if different)  
(no., street, city, state, zip code)

HOME PHONE NO. 3. CITIZEN OF (country) 4. OVER 21: YES ☐ NO ☐ AGE

5. MALE ☐ FEMALE ☐ 6. SINGLE ☐ MARRIED ☐ WIDOWED ☐ DIVORCED ☐ 7. OCCUPATION

8. EMPLOYER'S NAME BUSINESS PHONE NO. (213) 553-6651  
(Indicate if retired)

ADDRESS (no., street, city, state, zip code)

9. S. S. NO. (see page 2) OR EMPLOYER I. D. NO. (see page 2) 94-16888-111

☐ CHECK IF CLIENT IS A MARRIED WOMAN. (If so, answer questions 10 through 14 as applicable to husband.)

10. NAME 11. OCCUPATION

12. EMPLOYER'S NAME (Indicate if retired) 13. TYPE OF BUSINESS

14. ADDRESS (no., street, city, state, zip code)

☐ CHECK IF ACCOUNT IS TO BE OPERATED BY ANOTHER PERSON. (If so, answer questions 15 through 18 as applicable to agent.)

15. NAME 16. RELATIONSHIP TO CLIENT 17. OVER 21: YES ☐ NO ☐

18. ADDRESS (no., street, city, state, zip code)

19. SEND DUPLICATE: CONFIRMATIONS YES ☐ NO ☐ MONTHLY STATEMENT: YES ☐ NO ☐

NAME

ADDRESS

20. BANK OR COMMERCIAL REFERENCE: NAME Bank of California SAVINGS ☐ CHECKING ☐

ADDRESS 845 S. Figueroa St. Los Angeles, Cal 90017  
(no., street, city, state, zip code)

21. HAS REFERENCE BEEN VERIFIED? YES ☒ NO ☐ 22. IS ADDITIONAL CHECK NECESSARY? YES ☒ NO ☐

23. HAS CLIENT EVER HAD AN ACCOUNT WITH ANOTHER BROKER? YES ☐ NO ☐ CASH ☐ MARGIN ☐

NAME OF BROKER

ADDRESS (no., street, city, state, zip code)

24. IS CLIENT KNOWN TO YOU? YES ☒ NO ☐ HOW LONG? 1 yr Year(s) Month(s)

25. ACCOUNT WAS OBTAINED BY: WALK/CALL IN ☐ ADVERTISING ☐ FRIEND ☐ RELATIVE ☐

TRANSFERRED FROM REFERRED BY Jeff MacGinn

26. CLIENT'S PRESENT INVESTMENT OBJECTIVES ARE: INCOME ☐ SAFETY OF PRINCIPAL ☐ LONG TERM GROWTH ☐ TRADING PROFITS ☐

(rank in order of importance 1, 2, 3, 4, if more than one)  
Show percentage of investment funds to be devoted to each objective 1 % 2 % 3 % 4 %

27. WHOM WILL CLIENT RELY ON FOR ADVICE? OUR RESEARCH ☐ REG. REP. ☐ HIMSELF ☐ OUTSIDE SERVICES OR PUBLICATIONS ☐

(rank in order of importance 1, 2, 3, 4, 5, if more than one)  
OTHER SOURCES (Specify)

28. INITIAL TRANSACTION 29. CTS./DEPOSIT REQ.

PERSONAL INFORMATION  
(To be completed to the best of the R.R.'s ability)

30. CLIENT'S APPROXIMATE INCOME TAX BRACKET % 31. APPROXIMATE VALUE OF SECURITIES OWNED \$

ADDITIONAL CASH AVAILABLE FOR INVESTMENT \$ NUMBER OF DEPENDENTS

Prepared by (Signature of Reg. Rep.) 4-13-71  
Date submitted

Accepted by (Signature) accepted by (Partner)



PLF'S EX 1 FOR ID

MC  
8/1/73

13 PROSPECTUS

2-38087

100,000 Shares  
**FIRE FLY ENTERPRISES, INC.**

Common Stock  
(Par Value \$.01 Per Share)

MAR 17 1971

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS.

**FIRE FLY ENTERPRISES, INC.**

Supplement to Prospectus Dated January 4, 1971

Pursuant to the agreement described in the Supplement dated February 16, 1971, the Company's wholly owned subsidiary, Black Hat Mining Company, Inc. ("Black Hat"), has acquired additional mining properties and certain equipment in Utah and Colorado. The purchase price was \$235,250 of which \$100,000 was paid in cash; \$30,695 was paid by assuming certain obligations of Seller in that amount which are due in 1971; \$100,000 is due on February 1, 1972; and \$54,555 is due on February 1, 1973. In addition, a brokerage commission of \$30,000 is payable by the Company.

The properties consist of unpatented mining claims or leases of such claims. Some properties are subject to leases to others with a small royalty reserved, and some are subject to royalty burdens of up to 26½% of the gross proceeds from the sale of any ore.

None of the properties is presently producing except for a mine (the "Black Hat Mine") situated in a 500 acre tract covered by a group of 25 leases (the "Black Hat Leases"). Most of the properties covered by the Black Hat Leases are located in San Juan, Utah, approximately a mile and a half from the Company's Fire Fly mine but a small portion extends into Colorado.

In 1969 the Black Hat Mine produced approximately 5,900 tons of ore containing uranium and vanadium which was sold at an average price of approximately \$30.00 per ton. In 1970, production was approximately 11,500 tons which was sold at a price of approximately \$29.50 per ton. In January production was about 1,150 tons which was sold at an average price of about \$25.00 per ton. These figures are based upon settlement statements of Union Carbide Corporation furnished by the Seller. Production for February 1971 was about 1,500 tons. The selling price of such ore has not yet been calculated by Union Carbide.

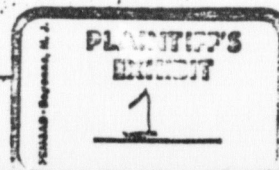
The Black Hat Leases are subject to royalty burdens ranging from 6¼% to 26½% and have varying terms;—4½ years as to 7 claims; 8 years as to 9 claims and a perpetual term as to 9 claims.

The Company intends to lease the properties to Lark Washburn under terms similar to those in the present lease pertaining to the Fire Fly mine. (See "BUSINESS AND PROPERTIES—Operating Lease"). The mine has been operated by Mr. Washburn since February 1, 1971.

The properties were acquired with limited warranties from the seller and the Black Hat Leases are subject to defects in title in addition to title uncertainties which are customary with respect to unpatented mining claims. (See "BUSINESS AND PROPERTIES—Title"). The Company made no title examination with respect to the properties other than the Black Hat Leases.

The Company has examined geological data furnished by the Seller but Company has not made an independent geological investigation. There is no assurance that the properties contain any significant ore reserves or that the present mining operation on the Black Hat Leases will continue for any substantial period of time.

Dated: March 16, 1971



**FIRE FLY ENTERPRISES, INC.**

**Supplement to Prospectus Dated January 4, 1971.**

The Company has agreed (subject to execution of detailed legal instruments) to purchase additional mining properties and certain equipment in Utah and Colorado. The price is \$285,549, of which \$10,000 has already been paid and the balance is payable \$90,000 in cash at the closing; \$30,694 by assuming certain obligations of Seller in that amount which must be paid during 1971; \$100,000 on February 1, 1972; and \$54,550 on February 1, 1973. In addition, a brokerage commission of \$30,000 is payable by the Company. It is expected that a wholly owned subsidiary will acquire the properties and execute notes for the deferred payments which will be secured by the properties.

The properties consist of unpatented mining claims owned or leased by the Seller. Some properties are subject to lease to others with a small royalty reserved to the Seller, and some are subject to royalty burdens ranging up to 20% of the gross proceeds from the sale of any ore.

All of the properties are inactive except a group of 30 unpatented mining claims covering 600 acres, known as the "Black Hat Claims". The major portion of the Black Hat Claims are located approximately a mile and a half from the Company's Fire Fly mine in San Juan, Utah, but a small portion extends into Colorado.

According to settlement statements of Union Carbide furnished by the Seller, in 1969 the Black Hat Claims produced approximately 5,900 tons of ore containing uranium and vanadium which was sold at an average price of approximately \$30.00 per ton. In 1970, production was approximately 11,500 tons which was sold at a price of approximately \$29.50 per ton, and in January, 1971 production was 1,150 tons which was sold at an average price of \$25.00 per ton.

The Black Hat Claims are subject to royalty burdens ranging from 6% to 20% of the gross sales price of ore produced.

The Company intends to lease all of the properties to Lark Washburn under terms similar to those in the present lease pertaining to the Fire Fly mine. (See "BUSINESS AND PROPERTIES —Operating Lease").

The Company agreed to acquire the properties after examining data furnished by the Seller. The Company has not made an independent geological investigation. There is no assurance that the properties contain any significant ore reserves or that the present mining operation on the Black Hat Claims can continue for any substantial period of time.

Dated February 16, 1971



## 13 PROSPECTUS

100,000 Shares  
**FIRE FLY ENTERPRISES, INC.**  
 Common Stock  
 (Par Value \$.01 Per Share)

MAR 17 1971

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Prior to this offering there has been no market for the Common Stock of the Company and there is no assurance that a market will develop. The initial public offering price has been determined arbitrarily by negotiations between the Company and Provident Securities, Inc.

THESE SHARES ARE OFFERED AS A SPECULATION  
 AND INVOLVE A HIGH DEGREE OF RISK.

	Initial Public Offering Price	Underwriting Commissions and Expenses(1)(2)(3)	Proceeds to Company
Per Share .....	\$3.25	\$.45	\$2.80
Total .....	\$325,000	\$45,000	\$280,000

(1) Includes \$32,500 (\$.325 per share) cash commission and \$12,500 (\$.125 per share) cash for non-accountable expenses of the Underwriter.

(2) Does not include additional filing, printing, legal, accounting and miscellaneous expenses estimated at \$27,350 (\$.273 per share) which the Company must pay in connection with this offering.

(3) Does not include substantial additional compensation received by the Underwriter. (See below.)

**This offering includes:**

(a) Special risks concerning the Company. For information concerning such risks, see "Introductory Statement," page 3.

(b) Immediate substantial dilution in that the book value of the stock after the public offering will be substantially less than the public offering price. For information concerning such dilution, see "Dilution," page 4.

(c) Significant additional underwriting compensation through the sale to the Underwriter or its designees at a price of \$.001 each, of Warrants to purchase up to 10,000 shares of the Common Stock of the Company at prices ranging from \$3.60 to \$4.50 per share and through other concessions involving indemnification. For specific information concerning this factor, see "Underwriting," page 12 and "Warrants", page 13.

The shares are being offered by the Underwriter subject to receipt and acceptance and approval of counsel as to legal matters, withdrawal, cancellation or modification of the offer, without notice, the right to reject offers, in whole or in part, and to certain further conditions. It is expected that delivery of the shares will be made on January 14, 1971 at the offices of Provident Securities, Inc., 32 Broadway, New York, New York.



PROVIDENT SECURITIES INC.

The date of this Prospectus is January 4, 1971.



No dealer, salesman or any other person has been authorized to give any information or to make any representation not contained in this Prospectus and, if given or made, such information or representation must not be relied upon as having been authorized by the Company or any Underwriter. This Prospectus does not constitute an offer to sell or a solicitation of an offer to buy any of these securities to any person in any jurisdiction where such offer or solicitation would be unlawful. The delivery of this Prospectus at any time does not imply that the information herein is correct as of any time subsequent to its date.

Until April 4, 1971 (90 days after the commencement of the offering), all dealers effecting transactions in the registered securities to which this Prospectus relates, whether or not participating in this distribution, may be required to deliver a Prospectus. This is in addition to the obligation of dealers to deliver a Prospectus when acting as Underwriters and with respect to their unsold allotments or subscriptions.

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IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE COMMON STOCK OF THE COMPANY AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

## INTRODUCTORY STATEMENT

FIRE FLY ENTERPRISES, INC. (the "Company") was originally incorporated in Nevada on September 26, 1968 under the name of Lark Enterprises, Inc. It adopted its present name and changed its state of incorporation to Delaware in June, 1970. The Company has recently acquired mining properties consisting of twenty-eight unpatented mining claims. On a portion of this property a small mining operation is being conducted by a lessee, for the recovery of ore containing uranium and vanadium (See "BUSINESS AND PROPERTIES—Operations"). Beyond the limited exposed mineralized surfaces in the area presently being mined, there are no known commercially mineable ore bodies on any of the Company's property. The Company intends to explore its property further in search of ore bodies and to seek to acquire additional properties and explore them for uranium and/or other minerals. However, there is no assurance that properties worthy of exploration can be acquired (See "BUSINESS AND PROPERTIES—Additional Properties"). The Company maintains a small office at 370 Lexington Avenue, New York, New York, 10017 (Tel. No. 212—MU 5-0764).

## Risk Factors

In analyzing this offering, prospective investors should consider carefully the following factors:

1. The Company has only recently been organized, has only a limited history of operation and is in a development stage.
2. As of September 30, 1970, the Company had current assets of \$44,391, and current liabilities of \$30,724, leaving it with working capital of only \$13,667. As of December 1, 1970, the Company had cash of \$25,074, total current assets of \$37,496, current liabilities of \$10,180 and no other debt.
3. The estimated minimum expenditure for initial exploration by the Company of its existing properties is \$23,000. If the results of this exploration do not justify further work, there will be no foreseeable need for the uncommitted portion of the proceeds of this offering amounting to \$229,650. In such event, the uncommitted portion of the proceeds may be used to acquire and explore additional mining properties. (See "USE OF PROCEEDS").
4. The Company has no full time employees. Only two members of its Board of Directors have had mining experience. Although one of such directors, Mr. Clyde Davis, has agreed to render consulting services on a month-to-month basis, there is no assurance that either of such directors will continue to serve the Company. (See "MANAGEMENT—Operating Personnel").
5. Exploration for uranium, vanadium and other mineral deposits is costly and extremely speculative. The selection of locations for drilling and other exploratory work is not an exact science and many failures are to be expected. Even if a mineral deposit is located, it may not be commercially mineable.
6. Because of the lack of any known commercially mineable ore body of significance, there is no assurance that the deposit presently being mined, will produce significant revenue in the future, nor is there any evidence of other deposits on the Company's properties.
7. The uranium industry until recently has been largely dependent upon the Atomic Energy Commission ("AEC") procurement program which expired on December 31, 1970. This and other changes in the uranium market may depress uranium prices and adversely affect the ability of the Com-



pany to market its ore (See "BUSINESS AND PROPERTIES—Markets and Prices—Government Regulation").

8. The Company's properties consist of unpatented mining claims which are subject to uncertainties as to title (See "BUSINESS AND PROPERTIES—Title").

9. There is intense competition for the acquisition of mining properties and the Company will be competing for new properties with many firms which have greater financial resources than the Company and larger technical staffs.

10. The Company is not now in a position to pay dividends and has no present intention of paying dividends in the foreseeable future.

11. The Underwriter was organized on February 13, 1969, registered as a broker-dealer on March 15, 1969, and commenced active business on July 22, 1969.

#### Dilution

The net tangible book value of each of the 402,325 shares presently outstanding was approximately \$.07 on September 30, 1970, representing an aggregate tangible net worth of \$30,097. The purchasers of the shares offered hereby will pay \$325,000 or \$3.25 per share, and the net tangible book value of each of the then outstanding shares will be approximately \$.59, an increase of \$.52 per share, based upon the net tangible book value as of September 30, 1970. Such increase inures to the present stockholders at the expense of the purchasers of the shares offered hereby who will suffer an immediate dilution in net tangible book value of \$2.66 per share.

The stockholders purchasing the shares offered hereunder will own approximately 19.9% of the outstanding stock for which they will have paid an aggregate of \$325,000 or \$3.25 per share. Present stockholders, including the officers and directors of the Company, will then own approximately 80.1% of the outstanding stock for which they will have paid a total of \$45,310 or approximately \$.113 per share.

#### USE OF PROCEEDS

The net proceeds of this offering (after deducting expenses amounting to about \$72,350) will amount to approximately \$252,650 and will be applied in the following order of priorities:

\$ 21,500 (at approximately \$1.72 per foot)—for drilling approximately 25 exploratory surface holes averaging approximately 500 feet in depth. (See "BUSINESS AND PROPERTIES—Proposed Exploration Program").

\$ 1,500 (at approximately \$.50 per foot)—for drilling approximately 50 exploratory underground holes averaging 60 feet in length. The underground holes will be drilled into the walls of existing mine workings. (See "BUSINESS AND PROPERTIES—Proposed Exploration Program").

\$229,650—uncommitted.

\$252,650 Total

There is no foreseeable need for the uncommitted portion of the proceeds. However, such funds will be available for further exploration of the Company's existing properties if the results of the initial exploratory program warrant and will also be available for the acquisition and exploration of additional mining properties. The Company has no specific additional properties in mind. There is no assurance that any such properties can be acquired.



## CAPITALIZATION

The capitalization of the Company as at December 1, 1970 and as adjusted to reflect the completion of this offering, is as follows:

	<u>Authorized</u>	<u>Outstanding</u>	<u>To be Outstanding Assuming all Shares Are Sold</u>
Common Stock (\$.01 par value) .....	1,000,000 shs.	402,325 shs.	502,325 shs. (1)
Warrants(1) .....	10,000	—0—	10,000

(1) A maximum of 10,000 shares will be reserved for issuance upon the exercise of warrants to be granted to the Underwriter (See Cover Page and "UNDERWRITING").

## BUSINESS AND PROPERTIES

The Company's properties consist of twenty-eight unpatented mining claims in San Juan County, Utah which are presently being operated by Lark L. Washburn under a lease. Twenty-six of these claims were acquired from Mr. Washburn and his wife in January, 1969, shortly after the Company was organized (See "MANAGEMENT—Certain Transactions"). Two additional unpatented claims adjacent to the original claims were filed on behalf of the Company in May, 1970 and included in the Washburn lease. The Company's claims cover approximately 380 acres and are contiguous to each other. The Company intends to conduct exploratory drilling on these claims and to seek to acquire additional properties and explore them for vanadium, uranium and other minerals or metals. Vanadium is a metal used to harden other metals, particularly steel. Uranium is a mineral which is used in nuclear fission processes, primarily nuclear weapons and power plants.

If any commercially mineable ore bodies are found on any of the Company's properties, it intends to engage others to mine them under lease or other contractual arrangements. If the Company finds it necessary to mine its own properties, it may need additional financing. There is no assurance that additional financing will be available.

## General Description of Existing Properties

The Company's properties are situated on a mesa approximately 35 miles southeast of Moab, Utah in the northwestern part of the Colorado Plateau. The Colorado Plateau covers parts of Colorado, Utah, Arizona and New Mexico, an area of approximately 14,000 square miles, spreading out on all sides from the point at which these states are joined. Uranium was first discovered on the Colorado Plateau in 1946. Certain areas within this plateau have produced substantial amounts of uranium ore since 1951 and presently constitute one of the principal domestic sources of such ore.

The Company's claims include one active underground mine, known as the Fire Fly Mine, and two exhausted mines. The entrance to the Fire Fly Mine is located on the south side of the

mesa approximately 200 feet above its base and 350 feet below the top. Access is over a one-half mile dirt road running from Utah Highway 46. Weather conditions generally permit all year operations in this area.

Eighteen of the Company's claims, including about 150 acres, are subject to a royalty (the "Climax Royalty") payable to the American Metals Climax Mining Company equal to 5% of gross proceeds derived from the sale of ore extracted therefrom.

According to Atomic Energy Commission records, during the fiscal years 1954 through 1969, the Company's original twenty-six claims produced approximately 54,000 tons of ore containing approximately 338,000 pounds of U308 (uranium) and 1,900,000 pounds of V205 (vanadium). Production fluctuated during this period and has decreased in recent years. Production in 1969 (all of which came from the Fire Fly Mine) amounted to 1,700 tons of ore containing approximately 10,000 pounds of U308 and 53,000 pounds of V205. The Company has been informed that prior to its acquisition of its initial twenty-six claims they were operated successively by Stocks & Gramlich, Inc. and Lark Washburn. The fact that mineable ore has been found on these properties in the past does not furnish any assurance that additional mineable ore will be found. The Company has no first hand or reliable knowledge that the previous operations on its properties were profitable.

#### Proposed Exploration Program

The Company's exploratory program will be directed at the Salt Wash Sandstone member of the Morrison Formation which is believed to underlie the Company's property. This member has a maximum thickness of approximately 300 feet and mining activities within it have been generally concentrated in the upper 100 feet. The top of this member is located approximately 300 feet from the top of the mesa on which the Company's property is located.

The Company's initial exploration program will consist of drilling at least 25 wide spaced exploratory holes from the top of the mesa to the Salt Wash Sandstone member of the Morrison Formation. The depths of such holes will range from 400 to 600 feet. The Company also intends to drill approximately 50 exploratory holes averaging 60 feet in length into the walls of existing underground mine workings.

Additional drilling, if any, will be based primarily upon the results of the initial program.

The Company's initial exploration program will not be based upon a comprehensive geological examination of the property, as only cursory geological examinations have been conducted to date by the Company and its geologist. Some drilling may be conducted near areas previously drilled unsuccessfully by others.

#### Title

Title to the land on which the Company's claims are located is held by the United States. The Company's claims are unpatented and consist only of rights to mine the properties involved. The validity of mineral rights depends upon many factors including the availability of the property when the claim was first filed, the existence of a valid mineral discovery therein, compliance with federal and state regulations pertaining to the description, filing and staking of claims, and the annual performance of work on each claim. Some of these factors are debatable and the relevant facts cannot all be ascertained from a practicable search of public records or field examination.



tion. Consequently, the Company's claims are subject to title risk. The Company does not know of any conflicting claims of title to its properties.

In order to maintain its rights under applicable law, the Company must expend \$100 for assessment work for the benefit of each claim each year. The Company's lessee is presently obligated to make such expenditures and has informed the Company that he has done so.

### Operations

When the Company acquired its claims, all known mineable ore bodies had been exhausted and further exploration was required. Fifteen exploratory holes were drilled by the Company in 1969. On the basis of the results of three of these holes the shaft of the Fire Fly Mine was extended to a deposit of ore which has been mined since December 1, 1969. There is no evidence that the deposit continues beyond the exposed surfaces in the area presently being mined. The Company has no indication that significant additional ore will be produced from the Fire Fly Mine or any of its claims.

From December 1, 1969 through September 30, 1970, the deposit in the Fire Fly Mine produced about 6,083.33 tons of ore containing approximately 32,276.91 pounds of U3O8 (Uranium Oxide) and 236,339.49 pounds of V2O5 (Vanadium Oxide) which was sold to Union Carbide Company. The following table indicates the total amounts for which such ore was sold.

Uranium Payment .....	\$105,473.09
Vanadium Payment .....	90,170.22
Development Allowance .....	16,140.78
Haulage Allowance .....	25,854.16
Total .....	\$237,638.25

Of the total proceeds, \$106,022.94 was paid to the Company in accordance with the terms of the operating lease and the balance was retained by Lark Washburn, the Company's lessee (See "BUSINESS AND PROPERTIES—Operating Lease" and "MANAGEMENT—Certain Transactions"). The sum of \$7,500 was returned to the lessee out of the Company's share of the proceeds as a production bonus (See "MANAGEMENT—Certain Transactions").

The Company's lessee employs six non-union laborers working in two shifts in connection with present mining operations. There is an ample supply of such labor.

### Markets and Prices

Ore containing uranium and vanadium is generally sold by mine operators to milling companies which extract uranium and vanadium in concentrate form for sale to the ultimate user. At present, uranium concentrate is sold by milling companies both to the AEC and to private industry. Uranium purchased by the AEC is either used by it in AEC reactors, stockpiled or leased to private industry.

Domestic uranium ore prices and the demand of milling companies for such ore have to date been materially affected by an AEC procurement program which includes AEC commitments to purchase specific quantities of uranium concentrate at fixed prices plus haulage and development allowances. The AEC commitments require the milling companies to purchase the ore used to fulfill the commitment from various producing properties in accordance with an allocation deter-



mined by the AEC. The program expired on December 31, 1970. The AEC has announced that it has no intention of purchasing, selling or leasing uranium concentrate after that date except in certain limited situations.

Ore produced by the Company to date has been sold by its lessee to Union Carbide for milling under a contract which expired on December 31, 1970. Union Carbide was not obligated to accept ore containing uranium in excess of the applicable AEC allocation. The Company's properties have had an allocation of 20,000 pounds of U3O8 per annum. Because of the cost of transporting ore, the Union Carbide mill forty miles away is the only potential customer for ore produced from the Company's properties. There is no assurance that the contract with Union Carbide will be renewed.

Current prices paid for uranium concentrate by private industry are substantially less than the prices paid in recent years by the AEC. The expiration of the AEC procurement program may have further adverse effects on the price of uranium concentrate. Moreover, since Union Carbide owns uranium and vanadium mines in the vicinity of its local milling facility, it may not purchase ore from others after December 31, 1970 if its needs can be satisfied by ore produced from its own properties.

At present the AEC does not permit enrichment of uranium imported from outside the continental United States for use in domestic facilities. The AEC has announced its intention to remove this restriction on or before December 31, 1973. This may have an adverse effect on uranium prices. Other changes in AEC policy might affect prices, volume of production and demand for uranium ore.

#### Operating Lease

The Company's properties have been leased to Lark Washburn (the "Lessee") for a term of 10 years from June 1, 1969. (See "MANAGEMENT—Certain Transactions").

The lease initially provided for a royalty to the Company of from 20% to 45% of the proceeds from the sale of ore depending upon its quality and quantity. The Company did not share in development and haulage allowances. Under an amended lease effective March 15, 1970 the Company is entitled to a royalty of 52% (55% on ore which is not subject to the Climax Royalty) without regard to quantity or quality. The Company is entitled to receive the excess of haulage allowances over the actual cost to the Lessee of transporting the ore to the point of delivery and 55% of production and development bonuses. The Company has the right to conduct exploratory drilling on the property.

The lease also provides that the Climax Royalty will be paid by Lessee and that taxes will be borne by the Company and Lessee in the same proportion as they share in the proceeds from the sale of ore.

Lessee is obligated to expend at least \$25,000 per annum for work on the claims and to perform all assessment work required to maintain the claims. All mining costs are borne by the Lessee.

The lease may be terminated by the Company or the Lessee on notice.

**Government Regulation**

The mining, handling, transportation and use of uranium and uranium ore is regulated by the AEC. The Company's Lessee is operating under an AEC license.

**Additional Properties**

The Company will seek to acquire additional properties and to explore them for uranium, vanadium, or other minerals. If the Company discovers commercial deposits, it proposes to lease the claims to mining operators. There can be no assurance that suitable additional properties will be available to the Company.

**MANAGEMENT****Directors and Executive Officers**

The executive officers and directors of the Company are:

<u>Name and Address</u>	<u>Office</u>
Louis Rudolph ..... 370 Lexington Avenue New York, New York 10017	President and Director
Clyde Davis ..... 859 East 2730 North Provo, Utah 84601	Treasurer and Director
Lark Washburn ..... 697 Glen Caro Drive Grand Junction, Colorado 81501	Vice President and Director
Monroe J. Korn ..... 415 Lexington Avenue New York, New York 10017	Director
Donald A. Gary ..... 105 West 55th Street New York, New York 10020	Director
Aaron Sobel ..... 64 South Littleton Road New City, N. Y. 10009	Director
Carol Gary ..... 145 West 45th Street New York, New York 10036	Vice President and Secretary

Mr. Rudolph is a Certified Public Accountant. For the past five years he has been a member of the firm of Safro, Gould & Rudolph of New York City.

Mr. Davis is a geologist. Since 1966 he has been Director of the mineral development program of Brigham Young University, Provo, Utah. Prior to that time he was a consulting geologist.

From 1951 to the present Mr. Washburn has been an independent mining operator specializing in uranium.



# PLAINTIFF'S EXHIBIT 11

Mr. Korn is an attorney. For the past eleven years he has been a member of the law firm of King & Korn of New York City.

Since July, 1968 Mr. Gary has been Executive Vice President of Incentive Techniques, Inc., a retailer of gas and other petroleum products. From 1964 to July 1968 Mr. Gary was a tax accountant with Arthur Andersen & Company, Certified Public Accountants.

Mr. Sobel is an attorney. Since September 15, 1969 he has been associated with the firm of Raphael, Searles & Vischi in New York City. From September 1967 to September 1969 he was employed by the American Title Insurance Company. Prior to that time he was engaged in the private practice of law in New City, New York.

Mrs. Gary has managed the administrative affairs of the Company since its inception. She has not had any other occupation during the past 5 years.

## Operating Personnel

The Company has no full-time employees. Mr. Davis, the Company's geologist, and Mr. Rudolph, who attends to financial affairs, work on a part-time basis. Mr. Davis devotes approximately 5 days and Mr. Rudolph approximately 3 days each month to the affairs of the Company. It is intended that upon completion of this offering, Mr. Davis will be retained as a consultant to the Company on a month-to-month basis at \$700 per month. He will devote approximately 3 days a week to the Company's affairs. If the operations of the Company expand and require additional time, Mr. Davis may later be employed on a full-time basis on terms to be negotiated. There is, however, no assurance that Mr. Davis or Mr. Rudolph will continue to serve the Company. In May, 1970, the Company issued 7,600 shares of Common Stock to Mr. Rudolph for services rendered (See "MANAGEMENT—Certain Transactions"). Except for Mr. Rudolph and Mr. Washburn (See "MANAGEMENT—Certain Transactions"), no officer or director has received any remuneration from the Company.

## Principal Holders of Securities

The following table sets forth, as of December 1, 1970, the shares of the Company's Common Stock owned of record and beneficially, and to be owned after the offering by persons owning more than 10% of the outstanding shares and by all officers and directors as a group.

Name and Address	Shares Owned of Record and Beneficially	Before Offering	After Offering Assuming 100,000 Shares Are Sold
Clyde Davis ..... 859 East 2730 North Provo, Utah 84601	66,500	16.5%	13%
Carol Gary ..... 145 West 45th Street New York, New York 10036	66,500	16.5%	13%
Phillip Kaye ..... 75 East End Avenue New York, New York	77,900	19.3%	15.5%
Lark Washburn ..... 697 Glen Caro Drive Grand Junction, Colorado 81501	45,125	11.2%	8.9%
All officers and directors as a group ..	225,625	56%	44.9%



By virtue of their stock ownership, the officers and directors and principal stockholders of the Company are and upon completion of this offering will be in a position to control the affairs of the Company.

#### Certain Transactions

In February of 1969, the following persons subscribed to the Company's Common Stock at a price of approximately \$.001 per share: Clyde Davis (77,900); Carol Gary (77,900); Philip Kaye (77,900); Louis Rudolph (11,400); Arnold Widlitz (11,400). At the same time Messrs. Rudolph and Widlitz subscribed respectively to 19,000 shares and 9,500 shares of Common Stock at a price of \$.526 per share. All of the aforesaid persons may be deemed to be promoters under the Securities Act of 1933, as amended.

In February of 1969, a group of seven investors subscribed to 47,500 shares and Aaron Sobel subscribed to 9,500 shares respectively of the Company's Common Stock at a price of approximately \$.526 per share.

In May, 1970, 7,600 additional shares of Common Stock each were issued to Mr. Rudolph and to Mr. Widlitz for services rendered. Mr. Rudolph rendered accounting services and Mr. Widlitz rendered services in connection with a proposed financing which was never consummated. Mr. Widlitz resides at 2665 Frances Street, Bellmore, New York 11710.

In January, 1969, the Company's initial 26 claims were acquired from Mr. and Mrs. Lark Washburn and then leased back to Lark Washburn for a term of ten years pursuant to an option which had been granted to the Company by Mr. and Mrs. Washburn on November 15, 1968. As consideration for the option, the Company issued 38,000 shares of its Common Stock to Mr. Washburn in February, 1969. The purchase price paid by the Company for the claims was \$50,000, of which \$35,000 was paid upon closing of title and \$15,000 was paid on February 11, 1969. Mr. Washburn has informed the Company that he and his wife acquired the property at a cost of approximately \$50,000.

On March 15, 1970, the original lease with Mr. Washburn was amended and as consideration therefor the Company issued 7,125 shares of its Common Stock to Lark Washburn and delivered its promissory note for \$35,000 payable on demand after September 15, 1970, together with interest at the rate of 7% per annum. The amendment increased the Company's share of the proceeds from the sale of ore. In addition the Company acquired the right to cancel the lease after payment of the aforesaid \$35,000 note (See "BUSINESS AND PROPERTIES—Operating Lease"). The note was paid in full on November 10, 1970.

The transactions described above have been adjusted to give effect to a capital reorganization effected in June, 1970.

In April, 1970, in accordance with a prior agreement, the Company paid a bonus of \$7,500 to Lark Washburn in consideration of his having mined at least 500 tons of ore per month during the period December 1, 1969 through March 31, 1970.

Mr. Washburn may be considered a promoter of the Company under the Securities Act of 1933, as amended.

The Company occupies an area of approximately 150 square feet in Mr. Rudolph's office at 370 Lexington Avenue, New York, N. Y., on a month-to-month basis, for which it pays a rental of \$100.00 per month.

## DESCRIPTION OF COMMON STOCK

The Company has an authorized capital of 1,000,000 shares of Common Stock, \$.01 par value per share. The holders of the Common Stock have one vote for each share held, and participate pro-rata in dividends when and as declared by the Board of Directors from funds legally available therefore, and, upon liquidation, dissolution or winding up of the Company, are entitled to share pro-rata in distributions to stockholders. There are no pre-emptive rights.

In the opinion of counsel, all of the shares of Common Stock offered hereby will, upon issuance and payment, be fully paid and non-assessable and not liable to further calls.

Registrar and Transfer Company of Jersey City, New Jersey is the registrar and transfer agent of the Common Stock.

## Non-Cumulative Voting

The shares of Common Stock of the Company have non-cumulative voting rights, which means that the holders of more than 50% of the shares of Common Stock voting for the election of directors can elect 100% of the directors, if they choose to do so and, in such event, the holders of the remaining less than 50% of the shares will not be able to elect any person or persons to the Board of Directors.

## Reports to Stockholders

The Company will furnish its stockholders with annual reports containing certified financial statements and such other periodic reports containing unaudited financial statements as it may deem advisable.

## UNDERWRITING

The Underwriter, Provident Securities, Inc., has agreed, subject to the terms and conditions contained in the Underwriting Agreement, to purchase from the Company 100,000 shares of Common Stock which are the subject of this offering.

The Underwriter is committed to purchase all of the 100,000 shares of Common Stock if any such shares are purchased, and the Company is committed to sell all, if any are sold.

The Underwriter proposes to offer shares of Common Stock, subject to prior sale, when, as and if received and accepted by the Underwriter in part directly to the public at the initial public offering price set forth on the cover page of this Prospectus, and in part to certain dealers at such price less a concession of \$.15 per share. The Underwriter may allow and such dealers may re-allow on sales to certain other dealers a discount not to exceed \$.10 per share.

For information with respect to Warrants to purchase 10,000 shares of the Company's Common Stock to be sold to the Underwriter, see "WARRANTS".

The Company has agreed to indemnify the Underwriter and the Underwriter has agreed to indemnify the Company against certain liabilities, including liabilities under the Securities Act of 1933, as amended.



The Company originally negotiated with, and entered into an understanding with the firm of Kevin Securities Corp. wherein it was contemplated that Kevin Securities Corp. would act as the Underwriter to effect the public offering contemplated herein. In connection with such intention, Kevin Securities Corp. incurred certain expenses. The Company has agreed to pay to the Underwriter a non-accountable allowance of \$12,500.00 for expenses and legal fees incurred in connection with the offering, of which the sum of \$3,000.00 is to be paid by the Underwriter upon receipt of the allowance to the firm of Kevin Securities Corp. and its attorney, for reimbursement of their expenses incurred in connection with this offering. Any portion of such allowance not expended by the Underwriter for such expenses may be deemed to be additional underwriter's compensation.

The foregoing sets forth some of the provisions of the Underwriting Agreement, but does not purport to be a complete statement of the terms contained therein. For more complete details, reference is made to the Underwriting Agreement which is filed as an exhibit to the Registration Statement of which this Prospectus is a part.

### WARRANTS

In connection with this offering, the Company has agreed to sell to the Underwriter for the sum of \$10.00, warrants to purchase a maximum of 10,000 shares of its Common Stock at prices ranging from \$3.00 per share to \$4.50 per share depending upon when the warrants are exercised. Such warrants are exercisable for a four year period commencing one year after the date of the Prospectus. The warrants contain the customary anti-dilution provisions providing for appropriate adjustments in the event of any recapitalization, reclassification, stock dividend, and the like. The holders of the warrants will have no voting, dividend or other rights as shareholders of the Company unless and until such warrants are exercised. The warrants may not be transferred for a period of one year, except to officers of the Underwriter, and thereafter will be transferable subject to compliance with the Securities Act of 1933, as amended, and the Rules and Regulations thereunder. Any profit realized by the Underwriter, on the sale of the warrants, or the underlying shares of Common Stock purchasable upon exercise of the warrants, may be deemed to be additional underwriting compensation.

The warrants and the underlying shares of Common Stock have been registered in the Registration Statement filed with the Securities and Exchange Commission, of which this Prospectus forms a part. One or more post-effective amendments to the Registration Statement or new Registration Statements will be required to be filed and declared effective before distribution to the public of the warrants or the shares issuable thereunder is commenced. The Company has agreed to file all post-effective amendments to the Registration Statement or new Registration Statements required to permit the public sale of the Common Stock underlying the warrants, once at the Company's expense and all subsequent times at the respective holders' expense.

For the life of such warrants, the holders are given, at a nominal cost, the opportunity to profit from a rise in the market for the Common Stock of the Company, with a resulting dilution in the interest of shareholders. During the term of the warrants, the Company may be deprived of favorable opportunities to procure additional equity capital if it should be needed for busi-



ness purposes, and the holders of the warrants may be expected to exercise them at a time when the Company would, in all likelihood, be able to obtain equity capital, if then needed by sale of a new offering on terms more favorable than those provided in the warrants.

### LEGAL OPINIONS

The legality of the Common Stock will be passed upon for the Company by Moore, Berson, Hamburg & Bernstein, 660 Madison Avenue, New York, New York 10021, and for the Underwriter by Feldshuh & Frank, 144 E. 44th Street, New York, New York 10017.

### EXPERTS

The financial statements of the Company included in this Prospectus have been examined as indicated and to the extent set forth in the report of Richard A. Eisner & Company, independent certified public accountants, contained herein. All such financial statements are so included in reliance upon their report and upon their authority as experts in auditing and accounting.

### REGISTRATION STATEMENT

The Company has filed with the Securities and Exchange Commission a registration statement under the Securities Act of 1933 (the "Registration Statement") with respect to the securities offered by this Prospectus. For further information with respect to the Company and such securities, reference is made to the Registration Statement, including the exhibits which are a part thereof. Statements in this Prospectus as to any contract or other document are not necessarily complete and, where such contract or other document is an exhibit to the Registration Statement, each such statement is qualified in all respects by the provisions of such exhibit, to which reference is hereby made for full statement of the provisions thereof.

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Board of Directors

Fire Fly Enterprises, Inc.

New York, New York

We have examined the statements of assets and unrecovered promotional, exploratory and development costs, liabilities, and capital shares of Fire Fly Enterprises, Inc. as of September 30, 1970 and the related statements of cash receipts and disbursements from inception (September 26, 1968) through September 30, 1970. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In the accompanying statements of assets and unrecovered promotional, exploratory and development costs and of capital shares, the capital shares issued for consideration other than cash have been stated in number of capital shares rather than in dollars. This is in accord with the applicable regulations of the Securities and Exchange Commission and, in our opinion, represents an acceptable method of presenting the accounts of the Company.

In our opinion, the accompanying statements of assets and unrecovered promotional, exploratory and development costs, liabilities and capital shares at September 30, 1970 present fairly the information required to be stated therein and the statements of cash receipts and disbursements presents fairly the cash transactions of the Company for the period September 26, 1968 to September 30, 1970.

RICHARD A. EISNER & COMPANY  
CERTIFIED PUBLIC ACCOUNTANTS

New York, New York

November 10, 1970



## FIRE FLY ENTERPRISES, INC.

STATEMENT OF ASSETS AND UNRECOVERED PROMOTIONAL,  
EXPLORATORY AND DEVELOPMENT COSTS

AS AT SEPTEMBER 30, 1970

	Acquired for Capital Shares	Acquired for Cash
Current assets:		
Cash .....		\$26,846
Accounts receivable .....		17,545
Total current assets .....		\$44,391
Unrecovered promotional, exploratory and development costs:		
Mineral rights (Note B) .....	7,125	\$85,000
Less excess of income from mineral mining royalties over promotional, exploratory and development costs incurred (exclusive of depletion):		
Mineral mining royalties .....		\$107,622
Promotional, exploratory and development costs:		
Drilling costs .....	\$ 9,653	
Travel expense .....	5,940	
Incentive bonus .....	7,500	
Legal expense .....	4,042	
Rent .....	1,300	
Interest (net) .....	2,172	
Accounting services .....	7,600	
Financing services .....	7,600	
Taxes (other than income taxes) .....	4,050	
Income taxes .....	2,650	
Other .....	1,323	
	\$ 38,630	68,992
Deferred costs of securities registration (Note D) .....		15,213
Other assets .....		422
Total .....		\$76,034

The accompanying notes to financial statements are an integral part hereof.



## FIRE FLY ENTERPRISES, INC.

## STATEMENT OF LIABILITIES

AS AT SEPTEMBER 30, 1970

	Payable in Cash
Current liabilities:	
Notes payable (7%)—demand (paid November, 1970) (Note B) .....	\$25,000
Taxes on income .....	2,650
Accrued expenses:	
Interest .....	117
Other .....	2,957
Total liabilities .....	<u>\$30,724</u>
Commitments (Note D)	

## STATEMENT OF CAPITAL SHARES

AS AT SEPTEMBER 30, 1970

	Number of Shares
Common stock, par value \$.01 per share (Notes A, B(1) and D):	
Shares authorized .....	<u>1,000,000</u>
Shares outstanding:	
Issued for cash at a price of approximately \$.001 per share aggregating \$310 and an option (on which the Company placed no value) to purchase and lease certain property to another party .....	294,500
Issued for cash at a price of \$.526 per share aggregating \$45,000 .....	85,500
Issued for services .....	15,200
Issued as partial consideration for amending lease (Note B) .....	7,125
Total shares outstanding .....	<u>402,325</u>

The accompanying notes to financial statements are an integral part hereof.

## FIRE FLY ENTERPRISES, INC.

## STATEMENTS OF CASH RECEIPTS AND CASH DISBURSEMENTS

	September 26, 1968 (Inception) to December 31, 1968	Year Ended December 31, 1969	Nine Months Ended September 30, 1970
Cash balance at beginning of period .....	\$—0—	\$45,000	\$ 1,770
Receipts:			
Sale of common stock .....	45,000		310
Mineral mining royalties .....		9,966	97,656
Interest on savings accounts .....		163	
Proceeds of loans .....		3,500	8,600
	<u>\$45,000</u>	<u>\$58,629</u>	<u>\$108,336</u>
Less increase in accounts receivable .....		8,367	9,178
Total receipts .....	<u>\$45,000</u>	<u>\$50,262</u>	<u>\$ 99,158</u>
Disbursements:			
Acquisition of mineral rights .....		\$50,000	\$ 35,000
Deferred costs of securities registration .....			15,213
Organization costs .....		341	
Security deposit .....			200
Repayment of loans .....			12,100
Travel expense .....		3,158	2,782
Legal expense .....		3,818	224
Drilling costs .....		8,522	1,131
Geologist .....		156	
Bulldozing and hauling .....		183	246
Office expense and telephone .....		2	617
Interest expense .....		670	1,665
Rent .....			1,300
Taxes (other than income taxes) .....			4,050
Income taxes .....			2,650
Incentive bonus .....			7,500
		<u>\$66,850</u>	<u>\$ 84,678</u>
Less increase in notes payable and accrued expenses .....		18,358	12,366
Total disbursements .....	<u>\$—0—</u>	<u>\$48,492</u>	<u>\$ 72,312</u>
Cash balance at end of period .....	<u>\$45,000</u>	<u>\$ 1,770</u>	<u>\$ 26,846</u>

The accompanying notes to financial statements are an integral part hereof.



## FIRE FLY ENTERPRISES, INC.

## NOTES TO FINANCIAL STATEMENTS

## (NOTE A)—The Company:

The Company's predecessor was incorporated in September, 1968, in the State of Nevada under the name of Lark Enterprises, Inc. ("Lark") with an authorized capitalization of 2,500 shares of capital stock, without par value, divided into shares of Class A and Class B stock. In June 1970, it merged into Fire Fly Enterprises, Inc. ("Fire Fly"), a wholly-owned subsidiary, organized under the laws of Delaware for that purpose, and having an authorized capitalization of 1,000,000 shares, \$.01 par value. In connection with the foregoing, each share of Lark stock then outstanding was converted into 950 shares of Fire Fly common stock. The total outstanding (as recapitalized) is 402,225 shares.

## (NOTE B)—Mineral Rights:

(1) In January, 1969, the Company acquired unpatented mining claims (see "Business and Properties" elsewhere in this Prospectus) located in San Juan County, Utah, at a cost of \$50,000. The claims were then leased back to the seller who mined the claims and the Company received a royalty from the proceeds of the ore sold. On March 15, 1970, in consideration for issuance of 7,125 shares of the Company's common stock and a \$35,000 note, the lease terms were amended (increasing the royalty the Company is to receive). The lessee is a director and major stockholder of the Company. Also see "Business and Properties—Operating lease" and "Management—certain transactions" elsewhere in this Prospectus.

The lease is to expire in 1979 but may be terminated upon 30 days written notice by the Company after the aforesaid note has been paid, and by the lessee at any time. Said note was paid in November, 1970. A third party is entitled to a royalty on ore extracted from certain of the company's claims.

(2) At September 30, 1970, the Company was in the development stage and had made no determination as to the extent of its ore reserves; accordingly it made no provision for depletion.

## (NOTE C)—Federal Income Taxes:

At December 31, 1969, the Company had net operating loss carry-forwards expiring as follows:

<u>Year Ended</u> <u>December 31,</u>	<u>Amount</u>
1973 .....	\$ 2,177
1974 .....	15,781
	<u>\$17,958</u>

## (NOTE D)—Deferred Costs of Securities Registration:

Costs incurred by the Company in connection with the registration of 100,000 shares of its common stock are being deferred. Upon consummation of the offering, the Company will charge such costs to additional paid-in capital. Attention is directed to "Warrants" elsewhere in this Prospectus with respect to warrants to be issued to the Underwriter in connection with this offering.



(Intentionally blank)

TAKARA PARTNERS

MADISON AVENUE, NEW YORK, N. Y. 10017

(212) 682-2662

September 16, 1970

Mr. Jack Shaw  
Sun and Surf Apartments, #220E  
100 Sunrise Blvd.  
Palm Beach, Florida

Dear Jack:

It was indeed a pleasure to see you again on Monday. I would like to reiterate in brief our conversation. First and foremost, let me assure you that your position in Monarch will be protected as we discussed, and I intend to the utmost of my ability to try to bring you "whole" again.

As I discussed with you, I would like to have your assistance and your participation in our new investment vehicle. Being in the investment management business, I have been faced with many requests by my personal friends and family to counsel them on their investment strategy and portfolios. Much as a physician dislikes giving medical advice on first sight without having thorough knowledge both before, during and after consultation, I too have avoided as much as possible giving investment advice in a cursory fashion. Unfortunately, I have seen too many professionals among my friends, and I suppose I have been guilty of it in the past myself as well, give advice to an individual to sell a particular stock in their portfolio without understanding the full implication of such a move. I have also been in the position of forgetting who bought what stock and when and thus, being unable to inform everybody as to exactly when they should sell.

It is my desire to provide my close friends and family the best professional advice possible. Therefore, this is the reason for the formation of Seijo Associates, another investment partnership commonly known as a hedge fund. I have attached a copy of a memo which was written by me and which I believe you already have. This explains in short the principle of what a hedge fund attempts to do. Also enclosed are a few copies of the partnership agreement. Other salient facts are as follows:

1. The partnership will be a Connecticut partnership filed in Connecticut (for tax reasons).
2. Its fiscal year will begin August 31.

PLAINTIFF'S EXHIBIT 15

September 16  
Page Two

3. The auditors will be Laventhol, Krekstein, Horwath & Horwath.
4. Our prime broker will be Lynch, Jones & Ryan, members of the New York Stock Exchange and the American Stock Exchange, and specialist in dealing with hedge funds.
5. Attorneys to the partnership will be Feiner, Curtis, Smith, Goldman and Goldman.

Although I have aluded to my basic investment policy in our discussions in the past, perhaps it would be worthwhile to re-iterate it as follows. Any investment undertaken by me as portfolio manager must be measured by a variety of rigorous criteria and standards. Among other things, competent management and a proven record of growth or potential for growth in the future is required. A highly disciplined and tough-minded attitude must be taken with each and every investment, with special controls being used constantly and systematically.

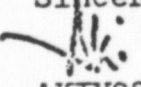
Of course, one cannot promise anything by the very nature of the business in an undertaking such as this. Yet, the net asset value of Takara Partners, of which you are a partner, appreciated 16.6% in the latter half of 1969, and its net asset value has increased 8.7% from January 1, 1970 to July 30, 1970.

I am hopeful that you are still enthusiastic about helping me and participating with me in this venture. I know that raising funds at this point in time might be a difficult task, but I would appreciate your help. I might also add that the minimum investment for Seijo Associates is \$50,000.

I hope to see both you and Rose here in New York shortly. Please give us a little notice so that we might arrange a dinner with John and Diane Avalon.

Best regards.

Sincerely,

  
AKIYOSHI YAMADA

AY/mm



PLAINTIFF'S EXHIBIT 16

LIST OF OFFICES  
ON REVERSE SIDE

*Woodcock, Moyer, Fricke & French*

Business Founded 1842

Incorporated

1500 CHESTNUT STREET • PHILADELPHIA, PA. 19102

LOCUST 9-2300

MEMBERS  
NEW YORK STOCK EXCHANGE  
AMERICAN STOCK EXCHANGE  
PHILADELPHIA BALTIMORE WASHINGTON  
STOCK EXCHANGE

CUSTOMER'S MONTHLY STATEMENT

WOODCOCK, CUMMING, TAYLOR & FRENCH INC.

MRS ROSE H SWAN  
SUN AND SUNF APTS APT 22E  
100 SUNRISE BLVD  
PALM BEACH FLA 33420

ACCOUNT NUMBER  
INSTRUCTION CODE  
TAX ID NUMBER

271 6685 12  
13 119 00  
299015882

PERIOD ENDING

02/28/71

TYPE ACCOUNT

CASH

SEQ NO 2539

DATE	SETTLE DATE	ITEM	QUANTITY	DESCRIPTION	PER UNIT	DEBIT DUE US	CREDIT DUE TO
31	0200	BGHT	200	OPENING BALANCE			400
31	0203	BGHT	700	ELECTROGAS DYNAMICS WARRANTS	-48500	97000	
31	0208	SOLE	500	ELECTROGAS DYNAMICS WARRANTS	-51000	357000	
31	0209	BGHT	100	VISUAL SCIENCES INC	-90000		4900
31	0211	BGHT	100	FIRE FLY ENTERPRISES INC	-61250	61250	
31	0211	SOLE	900	ELECTROGAS DYNAMICS WARRANTS	-50000		5021
31	0216	BGHT	200	FIRE FLY ENTERPRISES INC	-62500	500000	
31	0216			FUNDS JOURNALED CREDIT			8851
31	0217	BGHT	400	DELTA CORP OF AMERICA	-190500	782000	
31	0217	BGHT	50	DELTA CORP OF AMERICA	-100000	90344	
31	0222	BGHT	1000	SYNCHROMEX CORP CL A	-21750	937500	
31	0222	BGHT	3000	SYNCHROMEX CORP CL A	-20000	1820000	
31	0222	SOLE	1000	VISUAL SCIENCES INC	-150000		15000
31	0222	SOLE	500	VISUAL SCIENCES INC	-180000		8000
31	0222	SOLE	200	VISUAL SCIENCES INC	-100000		2000
				PRESENT BALANCE			5551
		LONG	450	SECURITY INVENTORY			
		LONG	900	DELTA CORP OF AMERICA			
		LONG	3000	FIRE FLY ENTERPRISES INC			
		LONG	1000	SYNCHROMEX CORP CL A			
		LONG		VISUAL SCIENCES INC			

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PLEASE RETAIN THIS STATEMENT FOR TAX PURPOSES

PLAINTIFF'S EXHIBIT 25

DEFENDANT ADVEST CO.'s ANSWER TO PLAINTIFF'S  
INTERROGATORIES, pp. 5 and 6 only.

- 5 -

13. (a) This defendant never made a market in the  
common stock of Fire Fly Enterprises, Inc.  
(b) Not applicable
14. (a) No such recommendation was made  
(b) Not applicable  
(c) Not applicable  
(d) Not applicable
15. (a) Negotiated price  
(b) Clifford McSwain  
(c) Peter N. Englebach

16. On three dates in 1971 Advest Co. executed several  
transactions on behalf of certain of its customers in  
connection with the purchase and/or sale of the common  
stock of Fire Fly Enterprises as is set forth below:

(a) # of Shares and Type of Order	(b) Price	(c) Date	(d) Name & Address of Seller or Purchaser
4350/Purchase	6 3/4	4/2/71	Competitive Assoc. Inc. Att: Gordon Fleisher 9601 Wilshire Blvd. Beverly Hills, Cal.
300/Sell	6 1/2	4/2/71	Arthur P. Bellis 49 Shady Lane Philadelphia, Penn.
300/Sell	6 1/2	4/2/71	William Frankel Wynnewood Plaza Apt. 610 Wynnewood, Penn.
500/Sell	6 1/2	4/2/71	Mrs. Alyce F. Bergman Greenhill Apts. EC-506 Philadelphia, Penn.
700/Sell	6 1/2	4/2/71	William Davis 65 W. Brother Drive Greenwich, Conn.
100/Sell	6 1/2	4/2/71	Hyman Escava 1836 Ocean Parkway Brooklyn, New York
250/Sell	6 1/2	4/2/71	Philip E. Goldfein 19 West 44th Street New York, New York
200/Sell	6 1/2	4/2/71	Mrs. Anne Grabarek 20 South Center St. Pottsville, Penn.

PLAINTIFF'S EXHIBIT 25

DEFENDANT ADVEST CO.'s ANSWER TO PLAINTIFF'S  
INTERROGATORIES, pp. 5 and 6 only.

- 6 -

<u>(a) # of Shares and Type of Order</u>	<u>(b) Price</u>	<u>(c) Date</u>	<u>(d) Name &amp; Address of Seller or Purchaser</u>
200/Sell	6 1/2	4/2/71	Dr. Edward J. Grabarek 20 South Center St. Pottsville, Penn.
100/Sell	6 1/2	4/2/71	Mrs. Adele A. Kauffman Towers of Windsor Park Apt. K-5-P Cherry Hill, N. J.
100/Sell	6 1/2	4/2/71	Barry Leonard Plaza Apts. Apt. 24-A 18th & Parkway Philadelphia, Penn.
200/Sell	6 1/2	4/2/71	Ivan Popkin 8317 Fairview Road Elkins Park, Penn.
900/Sell	6 1/2	4/2/71	Mrs. Rose H. Shaw Sun & Surf Apts. Apt. 22-E 100 Sunrise Blvd. Palm Beach, Florida
500/Sell	6 1/2	4/2/71	Dr. Emanuel Tress 7900 Old York Road Elkins Park, Penn.
1000/Purchase	3 1/2	5/18/71	Herzog Co. 170 Broadway New York, New York
1000/Sell	3 1/2	5/18/71	Jacob Blumenthal 1333 School Lane Rydal, Penn.
500/Purchase	4 3/8	6/14/71	Herzog Co. 170 Broadway New York, New York
500/Sell	4 3/8	6/14/71	William Davis 65 W. Brother Drive Greenwich, Conn.

(e) Customer

(f) None



- DEFENDANT'S EXHIBIT A  
COMPETITIVE ASSOCIATES INC.  
MEETING OF THE BOARD OF DIRECTORS  
JUNE 25, 1970

A meeting of the Board of Directors of Competitive Associates Inc. (the "Fund") was held on June 25, 1970, at the office of the Fund, 9601 Wilshire Boulevard, Beverly Hills, California at 10:00 AM pursuant to notice in writing. There were present at the meeting Messrs. Richard E. Boesel, Jr., Arthur Underhill and Robert L. Sprinkel. At the invitation of the Board, Messrs. Peter Landau and Philip N. Smith of Lawler, Sterling & Kent, Ezra Levin of Marshall, Bratter, Greene, Allison & Tucker, Michael Risman, Alan Markizon, Thomas Raychel and J. Robert Randolph were also present.

Mr. Risman called the meeting to order and Mr. Markizon kept the records of the meeting.

Mr. Randolph was called upon to discuss portfolio managers. It was Mr. Randolph's position that the present managers had poor records while managing the assets of the Fund (a copy of the performance records of each manager is attached) and that a completely new group of managers should be selected. Mr. Boesel raised the issue of the problems of terminating all managers simultaneously and since notice must be given upon termination, a lame duck situation would result. Questions were raised as to the posture the SEC would take in this matter without anyone knowing precisely what this would be. After discussion, it was unanimously

**RESOLVED:** To terminate the present Portfolio Managers upon giving of the required notice to all Managers.

Mr. Randolph then presented his reasoning to reduce the number of Portfolio Managers from four to two considering the reduction of assets under management at the present time. He began by describing what he was looking for in new portfolio managers. He wanted managers who work as a team with a single leader; a group that was young and a group that had no administrative problems. It was his intention to limit the managers to 20 stocks. Also, he felt it was best to retain discretion as to how the cash flow would be distributed between the various managers rather than according to a set formula as has been the method in the past. Mr. Randolph then engaged in a very detailed discussion of each of the portfolio managers who the fund manager was proposing to the Board of Directors. The materials he submitted to the Board are attached to these minutes. Mr. Levin was concerned as to whether a prospective manager who now only managed private money would lose its investment advisors act exemption because it was managing a public vehicle. Mr. Levin asked whether the prospective managers had checked that part with counsel. Mr. Landau indicated that they had and their counsel advised that there would

DEFENDANT'S EXHIBIT A

be no problems. Mr. Boesel expressed concern that the new managers, all private money managers, would comply with the 1940 Investment Company Act and responsibilities of that Act. Mr. Risman indicated to the Board that this was an area of expertise for Mr. Markizon and that the process of assuring compliance would begin immediately after the Board had agreed to the new managers. Mr. Randolph indicated that it was the fund manager's intention to get the portfolio managers together monthly.

The Board then unanimously

RESOLVED: To recommend to the shareholders that the two new managers of Competitive Associates Inc. be Takara Asset Management Corp. and Shaw Management Corp.

~~The Board was informed that Bernstein Macaulay does have one fund which is technically a public fund with about 100 shareholders and 5 to 7 million dollars worth of assets.~~ Discussion then turned to who would notify the outgoing managers and Messrs. Boesel and Randolph agreed to take that responsibility. The Board indicated its desire to give every opportunity to the old portfolio managers to resign rather than be terminated if they so desire. Messrs. Randolph and Boesel both indicated that this would be carried out.

Mr. Risman then asked Mr. Smith to discuss with the Board proposal changes in the management management contract. After a lengthy discussion the preliminary proxy, page 10, attached, was shown to the Board and approval was requested for this. A motion was made and it was unanimously

RESOLVED: To amend the management contract between the Fund and the Fund Manager as outlined in the preliminary proxy, copy attached.

The Board then considered a proposed provision for the new contract with the fund manager and the portfolio managers which will provide that in an emergency CCC can act as a portfolio manager, without compensation as such, until the formalities of the Investment Company Act of 1940 may be satisfied and a new portfolio manager be hired to manage that portion of the portfolio which has been "orphaned" by the termination of a portfolio manager contract. Upon motion duly made and seconded, it was unanimously

RESOLVED: To amend the Fund Manager Contract and the Portfolio Managers contract to allow the Fund Manager to manage assets of the Fund on an interim basis in an emergency situation. *if legally allowed.*



DEFENDANT'S EXHIBIT A.

The next proposal the the Board discussed concerned changing the existing formula allocation of new allocable assets so that henceforth, the Fund Manager will be able to distribute new allocable assets to portfolio managers in its sole discretion. After discussion, a motion was duly made and seconded and it was unanimously

RESOLVED: To amend the Fund Manager Contract to allow the Fund Manager to distribute new allocable assets in its sole discretion.

The Board then discussed modifying the fee structure for both the Fund Manager and Portfolio Manager. Heretofore there was no minimum base fee, although a negative incentive adjustment could be carried forward against future fees. Because of this, any new manager would have to work for free for the first year and Mr. Randolph could find no worthwhile manager to take the job under those terms. Therefore, Mr. Randolph recommended and, after a motion was duly made and seconded, it was unanimously

RESOLVED: To amend the Fund Manager's Contract so that a minimum base fee would be paid to both the Fund Manager and Portfolio Manager.

Another resolution put before the Board was to exclude from the fund manager's contract and the portfolio managers' contract the right to receive brokerage or reciprocal business, other than on a normal brokerage basis. The Board discussed whether an affiliate of the fund manager might receive brokerage or reciprocal business, and pass part of the profits back to the Fund. It was decided that this would more rightfully be decided by the Board of Directors to be elected at the shareholders' meeting. The Board wished to make it known for the record that it would only suggest approval of the elimination of the prohibition on the condition that arrangements to be negotiated between the Board and the Distributor would be no less favorable than arrangements previously negotiated between Admiralty Fund and The Income Fund of Boston, Inc. and the Distributor.

The Board was then asked to nominate the slate of officers to be presented to the shareholders at the next shareholder meeting. The following nominees were proposed:

Richard E. Boesel, Jr.  
Arthur J.C. Underhill  
J. Perry Smith  
Henry Homes, Jr.  
Jerome Robert Randolph  
Michael Risman  
James B. Barron



# DEFENDANT'S EXHIBIT A

The Board then authorized the Secretary of the Fund to submit a proxy statement to the Securities and Exchange Commission for purposes of having the shareholders vote upon the above mentioned proposed directors and management contract changes as well as the change in portfolio managers.

Mr. Boesel then introduced a motion for the Board to elect officers for the coming year. The following people were nominated:

Jerome Robert Randolph	President
Michael Risman	Vice President & Secretary
Thomas Raychel	Vice President & Treasurer
Alan Markizon	Assistant Secretary
Walter Latimer	Assistant Treasurer
David J. Servente	Assistant Treasurer

Upon motion duly made and seconded it was unanimously.

RESOLVED: That the above nominees be and hereby are elected to serve for the coming year and/or until their successors are chosen and qualified to serve.

Mr. Raychel presented to the Board the selection of Haskins & Sells as the Fund auditors for the coming year, to replace the Lybrand, Ross Bros. and Montgomery firm. Mr. Raychel explained to the Board the importance of a good working relationship with the auditors, particularly in the light of the great complications that a multi-management fund experiences. Mr. Sprinkel asked if the Haskins & Sells firm was qualified to be involved in the complexities of the Fund and Mr. Landau advised him of other Fund experiences with Haskins & Sells. Mr. Boesel stated that if Mr. Raychel, the chief financial officer, was convinced that a change was in the best interest of the shareholders, providing the firm so selected was competent in the field of multi-management funds, he would support it. The motion was made and seconded and it was unanimously

DEFENDANT'S EXHIBIT A

RESOLVED: That the Board would approve the selection of Haskins & Sells as the auditors for the Fund for the coming year, with the understanding that Mr. Raychel had the right to come back to the Board prior to July 15, 1970 if he believed he could not function properly with this firm as auditors for the Fund.

A discussion then ensued as to how the Fund might best collect the \$2 yearly fee due from shareholders. It was originally thought that such a fee would be recovered from dividends, but there have not been any since the inception of the Fund. Discussion centered around collecting it on redemption, but no resolution of the matter was made.

There being no further business to come before the Board, upon motion duly made and seconded, it was unanimously:

RESOLVED: To adjourn  
Adjourned  
A true record

Michael Resnick

Secretary of the Fund



DEFENDANT'S EXHIBIT A

COMMON ELEMENTS POSSESSED BY ALL NEW PROPOSED  
PORTFOLIO MANAGERS

A. Where the decision-making process is free of any public conflicts of interest. Here we are concerned primarily with those organizations that have their own public vehicle. It is our belief that if their portion of Competitive Capital outperforms one's own Fund, it advertises that there is a better place for his shareholders to go with their money. This cannot be explained away by saying it is easier to manage a small pool of money than a larger one or that he can get better performance when he concentrates more. Such reasoning only documents the inherent superiority in the Competitive Capital concept. Likewise, a management company cannot invest both pools of capital the same way as then each have been encumbered by the greater assets which the other brings to it. With a firm with no public vehicle, Competitive Capital or Associates then becomes their showcase to the public -- providing a strong incentive.

B. An investment philosophy that advocates intensive money management as opposed to "buy/hold blue chips" philosophy.

C. A disciplined system for taking profits and eliminating losses.

D. The ability of that organization to attract, motivate and hold good people.

E. The ability of that organization to concentrate one's energy on managing a portfolio and away from the day-to-day people, administrative and marketing problems.



DEFENDANT'S EXHIBIT A

F. The ability and access of the organization to use a complete network of information and research.

G. Where the decision-making process is centered with one individual but where this individual is able to interact with a small group of perhaps 3 or 4 people. Flexible investment decision-making procedures and the placing of responsibility with one individual are paramount.

H. Where outstanding performance records (all documented) have been realized over the past two years.

DEFENDANT'S EXHIBIT A  
TAKARA PARTNERS

Date established -- July, 1969

Based -- New York City

Assets under management -- \$22 million

Performance -- 1970 +5.3%  
                  1969 +14.3%

Takara Partners are private money managers and do not at present manage public funds. They presently manage a domestic partnership with \$6 million in assets called Takara Partners. Takara was up 14.3% in 1969 and is presently up 5.3% for 1970. They also manage Armstrong Investors S. A., an offshore fund with assets in excess of \$8 million. The fund commenced operation on February 15th of this year with a net asset value of \$20 per share. Its net asset value is now \$21.64 or up 8.5%. Several private accounts are also under management totaling slightly over \$8 million. Armstrong Investors and the private accounts are managed by Everest Management Corporation, an unregistered investment advisor of which John Galanis and Aki Yamada are the principal stockholders. A biographical sketch of principal people of the organization include:

Louis G. Zachary -- Chairman of the Board, President and Director

From 1945-1946, Mr. Zachary served in the U.S. Navy. He attend Harvard University from 1946-49, receiving the degree of Bachelor of Arts. He then attended the Columbia University Graduate School of Business from 1949 to 1951, from which he received the degree of Master of Business Administration. From 1951 to 1952, Mr. Zachary was employed at the Dewey & Almy Chemical Co., a division of W.R. Grace & Company, and from 1952 to 1966 he was

## DEFENDANT'S EXHIBIT A

employed by Union Camp Corporation as general manager of its chemical division operations. In January, 1967, he joined Drake Management Inc. as Vice President of this newly created investment management company, which managed up to \$75 million of investment funds. In November, 1969, together with Mr. Yamada and Mr. Galanis, he organized the Investment Manager.

### Akiyoshi Yamada -- Vice President and Director

Mr. Yamada was born in Tokyo, Japan, in 1942. He attended Washington and Jefferson College from 1960 to 1964, from which he received the degree of Bachelor of Arts. He then attended Harvard Business School from 1964 to 1965, from which he took a leave to work at Kuhn, Loeb & Co. At Kuhn, Loeb & Co. from 1965 to 1969, Mr. Yamada became senior analyst responsible for special situations and was named Assistant Vice President, the youngest in that firm's history. Additionally, he was responsible for foreign bank accounts on a discretionary basis. In June, 1969, Mr. Yamada left Kuhn, Loeb & Co. to form Takara Partners.

### John Peter Galanis -- Vice President and Director

Mr. Galanis attended Syracuse University from 1959 to 1963, from which he received the degree of Bachelor of Arts; he then attended Boston University Law School from 1963 to 1965. In June, 1965, he joined Merrill Lynch, Pierce, Fenner & Smith, Inc. where he eventually was employed as an analyst serving primarily the larger institutional clients. During this period (1967) he served on a discretionary basis as Portfolio Manager of the Neuwirth Fund, Inc. In February, 1968, he joined the Neuwirth Fund on a full-time basis as Vice President and Portfolio Manager. During 1968, the Neuwirth Fund, with assets of approximately \$80 million, was the top performing U.S. mutual fund. Mr. Galanis also served as a Director of the Downtown Fund, a fund affiliated with Neuwirth Management. Mr. Galanis continues to serve as a Director of the Downtown Fund.



DEFENDANT'S EXHIBIT A

SHAW MANAGEMENT COMPANY

Date established -- 1970

Based -- New York City

Assets under management -- newly created corporation to manage money for Competitive Associates

Mr. Ralph R. Shaw is presently a Vice President of Fleschner Becker Associates, a private partnership with assets of approximately \$25.5 million, and of FBE Partners, a private partnership with assets of approximately \$9.5 million. During 1969, these two pools of money experienced a decline of 2.7% and for calendar 1970 to date, has experienced a decline of slightly over 15%. Because of legal complications with the two private partnerships, it is necessary that a separate corporation be established in order for the organization to manage money for Competitive Associates. The principal officers of the over-all organization include the following persons:

Malcolm K. Fleschner, Chairman of the Board. Mr. Fleschner, 51, holds a B.S. in Economics from the Wharton School of the University of Pennsylvania. Prior to 1956, he was self-employed in real estate and commercial activities. From 1956 through 1962, he was associated with Wertheim & Co. and, from 1962 to 1965, was Chairman of a New York Stock Exchange member firm. In mid-1956, Mr. Fleschner formed The Fleschner Company, the predecessor of Fleschner Becker Associates.

## DEFENDANT'S EXHIBIT A

William J. Becker, President. Mr. Becker, 38, graduated cum laude from Brown University in 1953, where he was elected to Phi Beta Kappa. In 1955, he received an M.B.A. with Distinction from Harvard University Graduate School of Business Administration. From 1955 to 1966, Mr. Becker was associated with Wertheim & Co. as a securities analyst and institutional salesman. In April, 1966, Mr. Becker and Mr. Fleschner formed Fleschner Becker Associates.

Leon Pomerance, Executive Vice President and Treasurer. Mr. Pomerance, 54, was associated with Model, Roland Co. from 1953 to 1964. From 1964 to June, 1969, he was associated with H. Hentz & Co. where he created and supervised the Put and Call Option and Stock Loan Departments and serviced institutional accounts. Mr. Pomerance joined Fleschner Becker Associates in June, 1969. He is presently on the teaching staff of the New York Institute of Finance.

Ralph R. Shaw, Vice President. Mr. Shaw, 31, received an M.B.A. in Public Accounting from Hofstra University in 1959 and a J.D. degree from New York University School of Law in 1966. From 1966 to 1963 Mr. Shaw was a senior securities analyst with Standard & Poor's Corp. and in 1964 was a senior securities analyst with Paine, Webber, Jackson & Curtis. He was Manager of the Institutional Department of Coleman & Co. from 1965 to 1966 and from 1966 to 1967 was with Wertheim & Co. as a senior securities analyst. Mr. Shaw was a Vice President and portfolio manager of Shareholders Management Company from 1967 to 1968.

DEFENDANT'S EXHIBIT A

Andrew K. Fleschner, Vice President. Mr. Fleschner, 27, graduated cum laude from Harvard College in 1964 and received an M. B. A. from Harvard University Graduate School of Business Administration in 1967. From 1967 to 1969 Mr. Fleschner was a securities analyst with Fidelity Management and Research Corporation.



DEFENDANT'S EXHIBIT A  
COMPETITIVE ASSOCIATES INC.

9601 Wilshire Blvd.

Beverly Hills, California 90210

Date June 18, 1970

SUBJECT: Performance Comparison

YEAR-TO-DATE

	3/31/70	6/18/70	% Change
Standard & Poors Index of 500 Stocks	89.63	76.51	-14.54
Dow Jones Industrials	785.57	712.83	- 9.26
Competitive Associates Inc.	13.14	8.56	-34.86
Competitive Capital Fund	7.36	5.54	-24.73
Atlanta Asset Management Corp.	13.96	10.60	-24.07
Forstmann - Loff Management Co., Inc.	14.37	11.12	-22.62
Gibraltar Research and Management Co.	12.27		
Lockton Management Company, Inc.	12.79	8.49	-33.62

DEFENDANT'S EXHIBIT A  
COMPETITIVE ASSOCIATES INC.

9601 Wilshire Blvd.

Beverly Hills, California 90210

Date June 18, 1970

SUBJECT: Performance Comparison

	TWELVE-MONTHS-TO-DATE		
	6/19/69	6/18/70	% Change
Standard & Poors Index of 500 Stocks	97.24	76.51	-21.32
Dow Jones Industrials	882.37	712.83	-19.21
Competitive Associates Inc.	16.52	8.56	-48.18
Competitive Capital Fund	9.22	5.54	-39.91
Atlanta Asset Management Corp.	17.41	10.60	-39.12
Forstmann - Loff Management Co., Inc.	11.57	11.12	-32.89
Gibraltar Research and Management Co.	15.54		
Lockton Management Company, Inc.	16.51	8.49	-48.58



DEFENDANT'S EXHIBIT A

COMPETITIVE ASSOCIATES INC.

9601 Wilshire Blvd.

Beverly Hills, California 90210

Date June 18, 1970

SUBJECT: Performance Comparison

	CUMULATIVE		
	4/23/69	6/18/70	% Change
Standard & Poors Index of 500 Stocks	100.80	76.51	-24.10
Dow Jones Industrials	917.64	712.83	-22.32
Competitive Associates Inc.	18.30	8.56	-53.22
Competitive Capital Fund	9.89	5.54	-43.98
			%
Atlanta Asset Management Corp.	18.30	10.60	-42.08
Forstmann - Loff Management Co., Inc.	18.30	11.12	-39.23
Gibraltar Research and Management Co.	18.30		
Lockton Management Company, Inc.	18.30	8.49	-53.61



# DEFENDANT'S EXHIBIT A

UNIT BASIS VALUATION as of June 18, 19 70

## ASSETS

Investments at Cost	\$ 21,123,647	
Unrealized Market Appreciation [Depreciation]	(6,005,115)	
Investments at Market		\$ 15,116,532
Options at Cost		
Unrealized Market Appreciation [Depreciation]	\$	
Options at Market		
Short Term Notes		
Cash		1,501,630
Deposit with Brokers - Short Sales		465,750
Receivable for Investments Sold		8,666,600
Dividends Receivable		5,150
Accrued Interest Receivable		3,821
Accrued Discounts Receivable		
Other Assets		12,796
Total Assets		\$ 25,772,338

## LIABILITIES

Short Sales at Proceeds	\$ 801,466	
Unrealized Market Appreciation [Depreciation]	72,009	
Short Sales at Market		873,475
Payable for Investments Purchases		6,263,598
Payable Short Term Notes		
Accrued Expenses		176,366
Other Liabilities		62,425
Total Liabilities		\$ 7,975,864
Net Assets Under Advisement at Market		\$ 17,796,475
Number of Units Outstanding		2,078,612
Net Asset Value Per Unit		\$ 8.56

Assets Allocated to Date	\$ 41,185,089
Net Realized Capital Gain or [Loss]	(17,536,615)
Net Income	226,125
Unrealized Market Appreciation [Depreciation]	(6,078,124)
Net Assets Under Advisement at Market	\$ 17,796,475

Total Units Allocated From To

Total Money Allocated From To \$

Total investments at cost are 91.67% of net assets under advisement at cost.  
Percentage of short short capital gain to total gross income is 33.60.

# DEFENDANT'S EXHIBIT A

PORTFOLIO MANAGER: FORSTMAN-LEE MANAGEMENT COMPANY, INC.

UNIT BASIS VALUATION as of June 18, 1970

## ASSETS

Investments at Cost	\$ 4,892,668	
Unrealized Market Appreciation [Depreciation]	<u>11,073,318</u>	
Investments at Market		\$ 3,819,350
Options at Cost		
Unrealized Market Appreciation [Depreciation]	\$ _____	
Options at Market		
Short Term Notes		3,983,606
Cash		396,151
Deposit with Brokers - Short Sales		<u>1,730,064</u>
Receivable for Investments Sold		
Dividends Receivable		379
Accrued Interest Receivable		
Accrued Discounts Receivable		
Other Assets		
Total Assets		<u>\$ 929,550</u>

## LIABILITIES

Short Sales at Proceeds	\$ 375,327	
Unrealized Market Appreciation [Depreciation]	<u>36,298</u>	
Short Sales at Market		411,625
Payable for Investments Purchases		<u>1,777,607</u>
Payable Short Term Notes		
Accrued Expenses		34,136
Other Liabilities		
Total Liabilities		<u>\$ 2,223,563</u>
Net Assets Under Advisement at Market		<u>\$ 7,705,982</u>
Number of Units Outstanding		<u>693,063</u>
Net Asset Value per Unit		<u>\$ 11.12</u>

Assets Allocated to Date	\$ 12,082,370
Net Realized Capital Gain or [Loss]	(3,294,200)
Net Income	27,420
Unrealized Market Appreciation [Depreciation]	<u>=(1,109,616)</u>
Net Assets Under Advisement at Market	<u>\$ 7,705,982</u>

Total Units Allocated From 6/12/70 To 6/18/70: (4,335)

Total Money Allocated From 6/12/70 To 6/18/70 \$ (49,330)

Total Investments at cost are 42.74% of net assets under advisement at cost  
 Percentage of short short capital gain to total gross income is 80.61%



# DEFENDANT'S EXHIBIT A

UNIT BASIS VALUATION as of June 18, 1970

## ASSETS

Investments at Cost	\$ 10,016,656	
Unrealized Market Appreciation [Depreciation]	(2,443,057)	
Investments at Market		\$ 7,573,599
Options at Cost		
Unrealized Market Appreciation [Depreciation]		
Options at Market		
Short Term Notes		
Cash		(2,887,648)
Deposit with Brokers - Short Sales		
Receivable for Investments Sold		996,568
Dividends Receivable		
Accrued Interest Receivable		3,050
Accrued Discounts Receivable		
Other Assets		
Total Assets		\$ 5,685,569

## LIABILITIES

Short Sales at Proceeds	\$	
Unrealized Market Appreciation [Depreciation]		
Short Sales at Market		1,189,801
Payable for Investments Purchases		
Payable Short Term Notes		
Accrued Expenses		25,853
Other Liabilities		(8)
Total Liabilities		\$ 1,215,646
Net Assets Under Advisement at Market		\$ 4,469,923
Number of Units Outstanding		526,196
Net Asset Value Per Unit		\$ 8.49

Assets Allocated to Date	\$ 10,390,681
Net Realized Capital Gain or [Loss]	(3,473,817)
Net Income	(3,884)
Unrealized Market Appreciation [Depreciation]	(2,443,057)
Net Assets Under Advisement at Market	\$ 4,469,923

Total Units Allocated From 6/12/70 To 6/18/70: (3,192)

Total Money Allocated From 6/12/70 To 6/18/70: \$ (24,165)

Total investments at cost are 144.90% of net assets under advisement at cost  
 Percentage of short short capital gain to total gross income is 65.31%



# DEFENDANT'S EXHIBIT A

PORTFOLIO MANAGER: ATLANTA ASSETS MANAGEMENT CORP.

UNIT'S BASIS VALUATION as of June 18, 1970

## SETS

Investments at Cost	\$ 6,213,323	
Unrealized Market Appreciation [Depreciation]	(370,755)	
Investments at Market		\$ 5,842,568
Options at Cost		
Unrealized Market Appreciation [Depreciation]	\$	
Options at Market		
Short Term Notes		
Cash		405,672
Deposit with Brokers - Short Sales		69,399
Receivable for Investments Sold		5,940,028
Dividends Receivable		2,100
Accrued Interest Receivable		3,442
Accrued Discounts Receivable		
Other Assets		
Total Assets		\$ 12,263,409

## LIABILITIES

Short Sales at Proceeds	\$ 426,130	
Unrealized Market Appreciation [Depreciation]	25,711	
Short Sales at Market		461,850
Payable for Investments Purchases		3,893,991
Payable Short Term Notes		
Accrued Expenses		116,377
Other Liabilities		
Total Liabilities		\$ 4,474,218
Net Assets Under Advisement at Market		\$ 7,789,191
Number of Units Outstanding		735,170
Net Asset Value Per Unit		\$ 10.60

Assets Allocated to Date	\$ 12,710,052
Net Realized Capital Gain or [Loss]	(4,730,164)
Net Income	215,769
Unrealized Market Appreciation [Depreciation]	(406,466)
Net Assets Under Advisement at Market	\$ 7,789,191

Total Units Allocated From 6/12/70 To 6/18/70: (3527)

Total Money Allocated From 6/12/70 To 6/18/70: (\$36,259)

Total investments at cost are 62.09% of net assets under advisement at cost.  
Percentage of short short capital gain to total gross income is 70.38%

DATE: June 18, 1970

COMPETITIVE ASSOCIATES INC.

ATLANTA MANAGEMENT

" L O N G "

SECURITIES

American Reserve  
American Reserve Deb. 6% '90  
American Tel. & Tel.  
American Tel. & Tel. Wtts.  
Bell & Howell  
DeLia Inc.  
Eastern Airlines  
Eastern Gas & Fuel  
Exxon  
Geely Oil  
H. & R. Block  
Integrated Resources  
Itok  
Kaiser Resources Ltd.  
North American Mortgage Inc.  
Pittston Co.  
Pocoyo Carriage Estates  
Revenue Properties Comp. Ltd.  
Sperry Rand

EXHIBIT A  
DeLia Inc.  
Eastern Airlines  
Eastern Gas & Fuel  
Exxon  
Geely Oil  
H. & R. Block  
Integrated Resources  
Itok  
Kaiser Resources Ltd.  
North American Mortgage Inc.  
Pittston Co.  
Pocoyo Carriage Estates  
Revenue Properties Comp. Ltd.  
Sperry Rand

DEFENDANT'S  
DeLia Inc.  
Eastern Airlines  
Eastern Gas & Fuel  
Exxon  
Geely Oil  
H. & R. Block  
Integrated Resources  
Itok  
Kaiser Resources Ltd.  
North American Mortgage Inc.  
Pittston Co.  
Pocoyo Carriage Estates  
Revenue Properties Comp. Ltd.  
Sperry Rand

	SHARES	MARKET	COST
	10,000	\$310,000	\$295,000
	175 M	147,875	175,000
	15,000	639,375	666,472
	50,000	431,250	466,367
	10,000	302,500	301,560
	37,600	488,800	303,492
	20,000	290,000	293,380
	2,000	51,000	49,470
	11,900	194,862	206,778
	5,000	210,675	206,285
	2,500	119,662	109,161
	2,000	66,000	100,000
	12,500	525,000	495,025
	15,000	216,814	280,955
	10,700	201,962	246,100
	10,200	322,500	313,266
	5,300	63,600	53,050
	101,100	66,958	55,262
	2,500	69,375	71,700
		<u>\$4,717,566</u>	<u>\$ 5,066,323</u>



DEFENDANT'S EXHIBIT A

DATE: June 18, 1970

COMPETITIVE ASSOCIATES INC.

ATLANTA MANAGEMENT

" S H O R T "

SECURITIES  
 American Research Dev.  
 Ling Tomco Vought  
 Motorola  
 University Computing  
 West Construction  
 Walt Disney

SHARES

400  
 2,500  
 500  
 2,000  
 1,000  
 2,000

MARKET

\$25,100  
 37,500  
 43,125  
 53,500  
 44,875  
 257,750  
\$463,850  
 =====

PROCEEDS

\$25,840  
 35,359  
 34,536  
 56,359  
 40,962  
 230,863  
\$426,139  
 =====



DATE: June 18, 1970

COMPETITIVE ASSOCIATES INC.

FORSTMANN-LEFF MANAGEMENT

" S H O R T "

<u>SECURITIES</u>	<u>SHARES</u>	<u>MARKET</u>	<u>PROCEEDS</u>
ARMSTRONG CORP	2,000	\$52,500	\$52,731
Boeing Air Lines Inc.	1,000	30,000	28,618
Boeing Equipment	400	30,000	24,145
CINCO	3,000	101,625	92,144
Forstmann & Broad Inc.	1,000	35,000	29,843
Pittco	400	13,500	12,076
Simplicity Pattern	2,000	149,000	134,571
		<u>\$411,625</u>	<u>\$375,327</u>
		=====	=====

DEFENDANT'S EXHIBIT A

DEFENDANT'S EXHIBIT A

DATE: June 18, 1970

COMPETITIVE ASSOCIATES INC.

GIBRALTAR MANAGEMENT

" L O N G "

SECURITIES  
 Four Seasons Equity Corp.  
 Four Seasons Nursing Centers of America Inc

SHARES  
 11,250  
 30,000

MARKET  
 \$ 20,390  
 110,625  
 \$131,015  
 =====

COST  
 \$450,000  
 1,800,000  
 \$2,250,000  
 =====

DATE: June 18, 1970

COMPETITIVE ASSOCIATES INC.

FORSTMANN-LEFF MANAGEMENT

" L O N G "

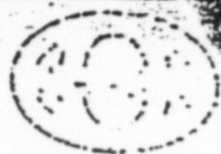
<u>SECURITIES</u>	<u>SHARES</u>	<u>MARKED</u>	<u>COST</u>
Automatic Data	1,000	\$32,750	\$32,637
Barroughs Corp.	2,000	214,000	206,235
Charles River Breeding Lab.	4,000	74,000	74,000
Chemical Solvents Corp.	6,000	166,500	165,635
Chemical Services Program	1,600	4,000	5,000
Chemical Service Program (units)	1,000	15,500	14,000
International Service Program	1,000	272,000	269,685
International Bus Machines	6,000	276,250	276,252
Manufacturing	2,000	172,500	170,379
Monroex	2,000	77,000	73,585
Investment Corp.	21,000	210,000	694,563
Housing Systems	3,000	285,000	418,270
International Data Corp.	30,000	142,500	262,500
Ohio Sealy Mattress Mfg. Co.	5,000	155,000	330,350
Recognition Equipment Inc.	6,000	342,000	328,473
Saxon Industries	35	21,350	22,700
Sunderline Broadcasting	4,000	44,000	45,381
Union Building Corp.	40,000	190,000	377,225
Yellowknife Bear Mines Ltd.		\$2,694,350	\$3,767,063
		=====	=====



COMPETITIVE ASSOCIATES INC.LOCKTON MANAGEMENT" L O N G "SECURITIESSHARESMARKETCOPI

Alco Standard Corp.  
 Asamera Oil Corp., Ltd.  
 Computing & Software Inc.  
 Dasa Corp.  
 Esquire Radio & Electronics  
 Gibraltar Financial of Calif.  
 Great Western Financial  
 Iowa Beef Processors Inc.  
 Land Resources  
 Levitz Furniture Corp.  
 Mesa Petroleum Co.  
 Mesa Petroleum Co. Pfd A  
 Mesa Petroleum Co. Pfd B  
 Milgo Electronic Corp.  
 Mohawk Data Sciences  
 Pan Ocean Oil Corp.  
 Pier 1 Import  
 Restaurant Associates Inc.  
 Rheingold Corp.  
 Saxon Industries  
 Telex  
 Western Financial Corp.  
 White Consolidated Inds. Inc.

\$825,000	50,000	\$1,219,668
489,250	33,000	1,035,997
253,750	10,000	288,852
212,500	20,000	263,000
5,625	500	14,750
206,230	15,000	213,500
251,630	14,600	239,100
450,625	17,500	531,625
63,750	15,000	42,380
375,000	10,000	275,515
150,800	5,200	158,740
422,537	7,700	223,000
10,975	200	13,000
465,000	20,000	655,600
495,000	15,000	423,375
72,500	5,000	155,000
230,000	10,000	215,375
161,437	31,500	753,833
806,000	26,000	743,000
684,000	12,000	561,000
156,250	10,000	150,000
195,000	15,600	235,985
540,500	46,000	1,035,215
<u>\$7,573,559</u>		<u>\$10,616,636</u>



## The SEABOARD CORPORATION

9501 WILSHIRE BOULEVARD, BEVERLY HILLS, CALIFORNIA 90210/(213) 278-8500/ CABLE: SEACOR

July 7, 1970

Mr. Akiyoshi Yamada  
Takara Partners  
342 Madison Avenue  
New York, New York 10017

Dear Mr. Yamada:

As I mentioned during our telephone conversation last week, Competitive Capital Corporation and the two funds for which it acts as fund manager, are vitally interested in maintaining open communications and giving as much operational guidance as possible to the Portfolio Managers. We are also deeply concerned about the various problems concerning compliance with the Federal securities laws that are created by the operation of multi-management funds. As a beginning in our endeavor to open communications and to assure that we both do not run afoul of the applicable rules, this letter will both give you information as to our operations and also requests information concerning some of your operations.

I have been asked to outline some of the difficult areas. Investment restrictions on the portfolio of Competitive Associates Inc. emanate from two sources: the Investment Company Act of 1940 and self-imposed restrictions by the fund. As I have explained during our conversations, questionable situations will probably not fit the given rule precisely and our office is available at any time to render decisions as to the propriety of any transaction. The following are the restrictions adopted by the shareholders:

1. Margin purchases for the fund as a whole are limited to 50% of its net assets.
2. Short sales are limited to 25% of the value of the fund's net assets and a short position in any class of one issuer may not be greater than 5% of such class.
3. The purchase of puts and calls are limited to 10% of the value of net assets of the fund.
4. No purchases of securities of another investment company, except in an open market transaction.



July 7, 1970

Page Two

5. Securities may not be purchased for the purpose of exercising control or management of the issuer.
6. The fund as a whole may not invest more than 25% of its assets in one particular industry.
7. a) As to 50% of the funds assets, no more than 5% may be invested in any one company and no more than 10% in any class of voting securities of one issuer.  
b) As to the other 50%, no more than 25% of its total assets in one issuer and no more than 25% in the securities of one issuer.
8. No more than 15% of the value of total assets may be invested in publicly held real estate investment trusts.
9. The fund may not purchase securities of a company where the officers and directors of the fund, the fund manager or the portfolio managers who individually own  $\frac{1}{2}$  of 1% of the securities of that company, as a whole own 5% or more of such securities. (As a general rule if the persons indicated above own more than 5% of a company, the fund cannot buy its securities). (We will endeavor to supply you with the information required in order to comply with this rule. To help us to begin such compilation, please indicate to us the names of all companies in which any officers or directors of your company own more than  $\frac{1}{2}$  of 1% and please indicate what percentage is owned.)
10. Subject to the concentration limits indicated above, the fund may not invest more than 10% of its assets in restricted securities ("Lettered stock").

All managers must be aware individually of the restrictions, but in most of the cases the Fund also may run afoul by the collective action of the managers. Therefore, the primary responsibility rests with all the managers and CCC, jointly, and communications will be very important.



Mr. Abdur M. Yamin  
Tel Aviv, Palestine

July 7, 1970  
Page Three

A very important restriction which is set out in the 1940 Act, but which sometimes is difficult to interpret, prohibits the fund from buying the securities of an affiliate. Simply, this means that if any officer, director, partner, employee or 5% stockholder of the fund, any manager or any parent of a manager controls another company the fund cannot buy the securities of that other company. This rule can be very tricky, as my "simple language" shows, so if you have any doubts, please call.

These are the primary restrictions of which you must be aware, but there are more technical ones, which including the above, are set out in greater detail on pages 5 through 8 of the prospectus.

I have been asked about trading procedures and problems they raise. While I would hope that all the traders for the submanagers and the trader for CCC will very shortly meet either in person or in a conference call to discuss trading strategies and similar problems, there are certain things which I will outline here: All of the submanagers and CCC will designate people who have authority to both order executions and receive such orders. When a portfolio manager decides that a transaction shall be made the designated person will call our designated person, inform him of the decision, and give instructions including price, quantity, time and other suggested strategy. CCC will then attempt to execute the transaction following the instructions of the Portfolio Manager. If such execution takes place the submanagers will be informed and if not he will be kept apprised of its progress.

There is the possibility of conflicts among orders. Orders will be handled on a first come, first served basis and if there is conflict the manager will be informed. If at the time the submanager attempts to place an order and another submanager or the managements of Admiralty Fund or The Income Fund of Boston are attempting to execute a transaction on the same side in the same security, the submanager will be informed that "we are attempting to work the same side of that security and we can get back to you." The submanager should then respond as to whether or not he desires to be informed when that particular security is "clear". He can also indicate if he would like to leave that order, but with the understanding that it will not be worked on until the order that is prior in time is completely executed or withdrawn.

Mr. Aklyouh Yamout  
Talman Hartman

July 7, 1970  
Page Four

If a submanager attempts to execute a transaction in a security in which another submanager on the Admiralty Fund or The Income Fund of Boston is attempting to execute a transaction on the other side of the same security, a price equitable to both funds will be decided upon and the transaction will be executed at that price in our offices.

Outside of the above, and consistent with investment strategies worked out among you and with CCC, the submanagers will have free reign. If you have any comments or suggestions we are certainly open to them.

We would like to understand your operations and any problems that you anticipate in having a public vehicle among your clients and partnerships. It is probably best to begin with a description of how you research, analyze and study securities and companies that you might seek to purchase, including in some detail information as to where emphasis is placed, descriptions of visits to management, numbers of analysts, the functions of the latter and methods by which you gather data and information both, prospectively, for the Fund, your individual clients and partnerships. In addition to yourself, will any other person have primary responsibility for the Competitive Associates Inc. account? Will people be assigned to work solely on Competitive Associates Inc. or do all the men in your firm contribute to all vehicles? Who makes the final decision to purchase or sell for our account? Who will be the designated person(s) to transmit that information to Competitive Capital?

What person selects the timing for a purchase or sale of securities? Does he have the same responsibility for other clients? How do you assure that the orders of your various clients do not compete with each other on the marketplace? We believe that the prevailing SEC and judicial decisions in this area indicate that when you purchase or sell securities for several of your accounts including CAI, CAI must be the first buyer and seller or we will be all open to question of "scalping" the funds.

We will need your assurance on this point and also assurance that at any time such is not the case you will notify us in writing as to the reason that such rule has been violated. At any time that you are selling a security for a client and within a week on either side are buying it for CAI or vice versa we must have an explanation within 24 hours of the CAI transaction or of the transaction for the other client, whichever is latter. We are also interested in knowing what precautions you have taken to see that all of your employees do not purchase securities or sell them prior to the time your clients have established or eliminated their positions. We are in the process of drawing an agreement which will be signed by all relevant Seaboard employees which will bind them not to benefit from information derived from their jobs at the expense of the fund.



DEFENDANT'S EXHIBIT B

UNCLASSIFIED

Mr. Anthony M. Monda  
Takara Partners

July 7, 1970  
Page Five

We would be interested in learning in detail about the types of records you keep. We are most interested in records concerning order placement and would like to know of the provisions you have made to keep records as to the time an order was placed with OCC, the person who placed it and any limitations on the order. A description of other relevant book-keeping as it applies to both Competitive and your other clients would be most appreciated.

The Investment Company Act of 1940 requires the retention by the Manager (OCC in this case) of research files concerning securities purchased for an investment company. Because of the unique nature of our operation, the onus must be on the portfolio manager to keep such records. However, we would expect to have immediate access to such records at all times. You should be aware that the Board has adopted a policy that there is no "formula, criteria, arrangements or methods of allocation exist between the Fund and any securities dealers with respect to allocation or direction of brokerage transactions to such dealers, directly or indirectly" other than those disclosed in the prospectus. Such policy is disclosed in the prospectus and is complied with by OCC. It must guide your activities as well.

Any other information that you believe that we should have to aid us in understanding your business and our mutual problems will be gladly received. We would like to be able to better understand the entities and their relationship, of Takara Partners, Armstrong Investors and Everest Management Corporation. It would be helpful to know the approximate number of investors, and size of their investments in the private partnerships; approximate number and size of private clients; and number of investors in the offshore Fund.

You may be assured that all information furnished in response to this request, or any further requests will be treated as confidential and not divulged to others without your permission.

For your information we have enclosed a copy of our prospectus and would call your attention to the sections on brokerage and investment restrictions.

We hope that our relationship will be a continuing and compatible one and you may be assured that the people here at Competitive and Seaboard will do everything we can to help you. You should not hesitate to call on us for whatever you need.

Sincerely yours,

-288a-



DX 34

*Defendants*  
COMPETITIVE ASSOCIATES INC.  
*(Admst)*  
*Ex 6*  
*7/18/74*

SPECIAL MEETING OF SHAREHOLDERS

October 9, 1970

Pursuant to a motion to adjourn the special meeting of shareholders of Competitive Associates Inc. held at the office of the Corporation, 9601 Wilshire Boulevard, Beverly Hills, California on October 7, 1970, a special meeting of shareholders was held at the office of the Corporation on October 9, 1970 at 11:00 a.m., Pacific Coast Time.

The Assistant Secretary of the Fund, Alan R. Markizon, presided and kept minutes.

There were represented by proxy, one million thirty thousand eighty-four (1,030,084) shares out of a total two million twenty-one thousand eight hundred ninety-seven (2,021,897) shares issued, outstanding and entitled to vote.

The Assistant Secretary called the meeting to order and declared a quorum was present. As the Notice of the Special Meeting of Shareholders of the Corporation was read at the original convening of the meeting on September 30, it was moved that the reading of the Notice be waived. Upon motion duly made and seconded, it was

**VOTED:** To waive the reading of the Notice of the Special Meeting of Shareholders.

The Assistant Secretary then stated that it was in order to consider the election of seven directors of the Fund as identified in the Notice:

Michael Risman  
Jerome Robert Randolph  
Henry Homes, Jr.  
J. Perry Smith  
Richard E. Boesch, Jr.  
Arthur J. C. Underhill  
James B. Barron

No other nominations were made and a ballot was taken resulting in the election of the above seven nominees. Nine hundred seventy-

DEFENDANT'S EXHIBIT C

five thousand eight hundred fifty-one (975,851) shares voted in favor of the above seven nominees and fifty four thousand two hundred thirty-three (54,233) shares voted against said nominees.

The following resolution was then presented:

RESOLVED: That Messrs. Risman, Randolph, Homes, Smith, Boesel, Underhill, and Barron be elected to serve as Directors of the Fund until the next Annual Meeting of Shareholders and until their successors are duly elected and qualify.

The Assistant Secretary then stated that it was in order to consider and act upon the ratification and selection by the Board of Directors of Haskins & Sells, independent public accountants, as auditors for the year ending March 31, 1971. The following resolution was then presented:

RESOLVED: That the appointment by the Fund Board of Directors of Haskins & Sells, as auditors for the year ending March 31, 1971 be and hereby is ratified.

The above resolution was affirmatively voted upon by the holders of nine hundred ninety-nine thousand three hundred seventy-four (999,374) shares with thirty thousand seven hundred nine (30,709) shares voting against it.

It was then in order to act upon a new Fund Manager Agreement with Competitive Capital Corporation, as described in the proxy statement attached and made part of these minutes. The following resolution was then presented:

RESOLVED: To approve a new Fund Manager Agreement with Competitive Capital Corporation as described in the attached Proxy, such new agreement being required by reason of certain changes in the agreement, including changes in the management fee payable to the Fund Manager.

The above resolution was affirmatively voted upon by the holders of nine hundred fifty-two thousand three hundred ninety-two (952,392) shares with seventy seven thousand six hundred ninety-two (77,692) shares voting against it.

Nine hundred sixty one thousand five hundred forty-four (961,544) votes were cast favor and sixty eight thousand five hundred forty (68,540) votes were cast against the following resolution:

DEFENDANT'S EXHIBIT C

RESOLVED: To approved a new Portfolio Manager Agreement among Shaw Management Company, Incorporated that manage the Fund.

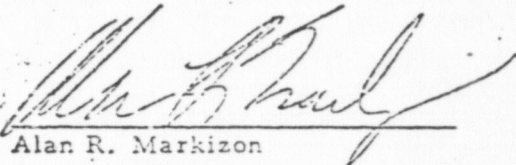
Nine hundred sixty one thousand three hundred seventy two (961,372) votes were cast in favor and sixty eight thousand seven hundred twelve (68,712) votes were cast against the following resolution:

RESOLVED: That the proposed Portfolio Manager Agreement between the Fund, the Fund Manager, and Takara Asset Management Co., Inc. be approved.

There being no further business to come before the meeting, upon motion duly made and seconded, it was

VOTED: To adjourn.  
Adjourned.  
A true record.

ATTEST:

  
Alan R. Markizon  
Assistant Secretary



DEFENDANT'S EXHIBIT C.

**IDC**

Investment Data Corporation  
2602 WEST VICTORY BOULEVARD/BURBANK, CALIFORNIA 91505/(213) 845-2673

October 9, 1970

Mr. Michael Risman  
Competitive Associates, Inc.  
9601 Wilshire Boulevard  
Beverly Hills, California 90210

Dear Mr. Risman:

I certify that the figures shown below are the true and correct tabulation of the proxies for The Competitive Associates Incorporated return from the mailings made by you.

Outstanding shares on record date, 8/21/70 2,021,397

Total ballots mailed 12,192

Total ballots returned 6,243

Total shares voted 1,030,084

Percentage of shares voted 50.94%

Results of Vote	Yes	No
Proposition 1	975,851	54,233
2	999,374	30,709
3	952,392	77,692
4	961,544	68,540
5	961,372	68,712

Yours very truly,

INVESTMENT DATA CORPORATION

*Charles J. Kalb*

Charles J. Kalb  
Vice President

CJK:blo

DEFENDANT'S EXHIBIT C

COMPETITIVE ASSOCIATES INC.  
SPECIAL MEETING OF SHAREHOLDERS

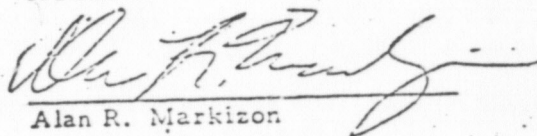
October 7, 1970

Pursuant to a motion to adjourn the special meeting of shareholders of Competitive Associates Inc. held at the office of the Corporation, 9601 Wilshire Boulevard, Beverly Hills, California on September 30, 1970, a special meeting of shareholders was held at the office of the Corporation on October 7, 1970 at 11:00 A.M., Los Angeles time.

The Assistant Secretary of the Fund, Alan R. Markizon, presided and kept the minutes. Being informed that a quorum was not present, Mr. Markizon declared the meeting adjourned until October 9, 1970.

VOTED:    To adjourn.  
          Adjourned.  
          A true record.

ATTEST:



Alan R. Markizon  
Assistant Secretary

DEFENDANT'S EXHIBIT C

COMPETITIVE ASSOCIATES INC.  
SPECIAL MEETING OF SHAREHOLDERS

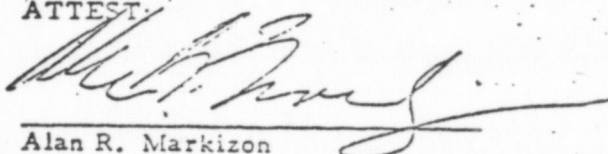
September 30, 1970

A special meeting of the shareholders of Competitive Associates Inc. was held at 9601 Wilshire Boulevard, Beverly Hills, California, on September 30, 1970 at 11:00 A. M., Los Angeles time, pursuant to written notice thereof sent by the Secretary to all shareholders of the Corporation, a copy of which is enclosed herewith.

The Assistant Secretary of the Fund, Alan R. Markizon, presided and kept the . . . . Being informed that a quorum was not present, Mr. Markizon declared the meeting adjourned until October 7, 1970.

VOTED: To adjourn.  
Adjourned.  
A True Record.

ATTEST

  
Alan R. Markizon  
Assistant Secretary



DEFENDANT'S EXHIBIT C



COMPETITIVE CAPITAL CORPORATION

9601 WILSHIRE BOULEVARD, BEVERLY HILLS, CALIF. 90210 • 278-8500

September 11, 1970

TO SHAREHOLDERS OF COMPETITIVE CAPITAL FUND AND  
COMPETITIVE ASSOCIATES INC.

Attached is a Notice of Meeting, Proxy Statement and Form of Proxy for a Special Meeting in Lieu of Annual Meeting of Shareholders of your Fund. The purpose of this meeting is to consider proposed changes in the management contracts of the Fund, the election of Directors, rejection or ratification of the Board of Directors' selection of auditors and ratification or rejection of new Portfolio Managers for the Fund.

On July 6, 1970, Competitive Capital Corporation, your Fund Manager, issued a press release announcing the proposed changes in Portfolio Managers of your Fund. The release stated in part, "all of the new Portfolio Managers have outstanding investment records during the past two years. Some have actually made substantial gains in each of the last six quarters."

In fact, none of the proposed Portfolio Managers achieved gains in each of the last six quarters, and the characterization of their investment records was merely an expression of opinion on the part of the Fund Manager. Comparable accounts managed by three of the proposed Portfolio Managers declined in 1969 and the first half of 1970. Another manager, which did not commence operations until the second quarter of 1969, had gains in only the five quarters preceding the issuance of the press release. The other proposed manager had gains in the last quarter of 1968, each quarter of 1969, and the first, but not the second of 1970. We regret any inaccuracies.

It also should be noted that all of the performance figures referred to above are based on selected accounts managed by respective managers, which may not be representative of the performance of the managers for accounts comparable in size and investment objectives to the portfolio it is proposed they manage for your Fund.

No statement concerning the previous records of the proposed Portfolio Managers should be construed as implying that their investment performance will reach any particular level in the future.

COMPETITIVE CAPITAL CORPORATION

Jerome Robert Randolph  
President

DEFENDANT'S EXHIBIT C

COMPETITIVE ASSOCIATES INC.

9601 Wilshire Boulevard  
Beverly Hills, California

NOTICE OF SPECIAL MEETING IN LIEU OF THE ANNUAL MEETING OF SHAREHOLDERS  
TO BE HELD SEPTEMBER 30, 1970

TO THE SHAREHOLDERS OF COMPETITIVE ASSOCIATES INC:

A Special Meeting in lieu of the Annual Meeting of Shareholders of Competitive Associates Inc. ("Fund") will be held at the offices of the Fund, 9601 Wilshire Boulevard, Beverly Hills, California, on September 30, 1970, at 11:00 A.M., Los Angeles Time, for the following purposes:

1. To elect seven directors to serve until the next annual meeting of shareholders and until their successors are duly elected and qualify.
2. To ratify or reject the selection by the Board of Directors of Haskins & Sells, independent public accountants, as auditors for the year ending March 31, 1971.
3. To approve or disapprove a new Fund Manager Agreement with Competitive Capital Corporation as described in the proxy statement accompanying this notice, such new agreement being required by reason of certain changes in the agreement, including changes in the management fee payable to the Fund Manager.
4. To approve or disapprove a new Portfolio Manager Agreement with Shaw Management Company, Incorporated.
5. To approve or disapprove a new Portfolio Manager Agreement with Takara Asset Management Co., Inc.

To transact any other business that may come before the meeting or any adjournment, or adjournments thereof.

The Directors unanimously recommend approval of proposals 3 through 5, the election as Directors of the nominees named in the Proxy Statement and the selection of Haskins & Sells as auditors.

Only shareholders of record on the books of the Fund at the close of business August 21, 1970, are entitled to notice of and to vote at the meeting or at any adjournments thereof.

Please sign, date and return the enclosed form of Proxy, whether or not you plan to attend the meetings. You may nevertheless vote in person if you do attend.

BY ORDER OF THE BOARD OF DIRECTORS

Michael Risman  
Secretary of the Fund

Dated: September 11, 1970

THE MANAGEMENT URGES YOUR PROMPT ATTENTION AND COOPERATION IN COMPLETING, DATING, SIGNING AND MAILING THE ENCLOSED PROXY IN THE ADDRESSED AND POSTPAID ENVELOPE PROVIDED FOR THAT PURPOSE SO THAT YOUR SHARES MAY BE VOTED AT THE MEETING.



## DEFENDANT'S EXHIBIT C

Mr. Kaman is Vice-President and Secretary of the Fund and Secretary of the Fund Manager; Vice-President of the Seaboard Corporation; and has been House Counsel, Director and/or officer of the Seaboard Corporation, its subsidiaries and predecessors since February, 1967. He is also Secretary of the Admiralty Fund, The Income Fund of Boston, Inc. and Vice-President and Secretary of Competitive Associates Inc. Prior to February, 1967, he was an attorney with an agency of the United States Government.

Mr. Homes is and has been for the last five years an attorney, private investor, and independent oil operator. He is also president of Homeward Realty Co., Inc., owner and operator of real estate and a director of Admiralty Fund and The Income Fund of Boston, Inc.

Mr. Smith has been President of Boston Administrative and Research Company Inc., investment adviser to The Income Fund of Boston, Inc. for more than five years. He is the President and a Director of The Income Fund of Boston, Inc.; manages the investments of several private clients; and is President of PDI Fund.

Mr. Randolph is President of the Fund and Fund Manager and has been President and Chairman of the Board of Chancellor Management Company, an 80% owned subsidiary of Seaboard, since August 1969. He was Vice-President of William O'Neil & Company from June 1968 to August 1969, and an Investment Officer of Title Insurance and Trust Company from 1965 to June 1968. He is also President and Chairman of the Board of All States Management Company; Investment Advisor to the Admiralty Fund, and the Admiralty Fund; Executive Vice-President and Director of Boston Administrative and Research Company, Inc., Investment Advisor to The Income Fund of Boston, Inc. and The Income Fund of Boston, Inc.; and President of Competitive Capital Corp.

Mr. Barron has been associated with the Marriner & Co. Inc. since January 1970. Prior to that time he was employed by the New England Merchants National Bank of Boston for more than five years.

The directors as a group were paid \$5334 in fees and expenses for the year ending March 31, 1970. Those directors affiliated with the Fund Manager during that period did not receive any fees or compensation from the Fund.

### RATIFICATION OR REJECTION OF THE SELECTION OF AUDITORS

The Board of Directors has unanimously selected Haskins & Sells to act as the Fund's auditors for the year ending March 31, 1971, subject to ratification by the Fund's shareholders. Neither Haskins & Sells, nor any of its associates, has any direct financial interest in the Fund. Accordingly, the Board of Directors recommends that the selection of Haskins & Sells be ratified.

### APPROVAL OR DISAPPROVAL OF A NEW AGREEMENT WITH THE FUND MANAGER

At a Special Meeting of Shareholders of the Fund held February 17, 1970, the present Fund Manager Agreement was approved by shareholders of the Fund. Approval at that time was necessary because the consummation of the then pending sale of control of Competitive Capital Corporation ("CCC") the Fund Manager would result in an assignment of the Agreement. On March 27, 1970, Seaboard acquired all the outstanding stock of CCC, for a aggregate purchase price of approximately \$4,194,000 consisting of \$2,312,000 cash, shares of common stock Seaboard valued at \$675,000, plus the assumption of subordinated debt and accrued interest thereon in the aggregate amount of \$1,207,000. Seventy-five thousand shares of common stock of Seaboard are being held in escrow for up to three (3) years pending final determination of certain contingent liabilities of CCC. Balance sheets of CCC on December 31, 1969 and June 30, 1970 are on pages 9 to 11. Attention is directed to notes 4 and 7 to the December 31, 1969 balance sheet. The address of both Seaboard and CCC is 9601 Wilshire Boulevard, Beverly Hills, California 90210.

Messrs. Boesel and Robert L. Sprinkel, III, then both officers and directors of the Fund, owned approximately 20% and 22.5% respectively of the capital stock of CCC and received their proportionate share of the purchase price. Messrs. Lloyd A. Wittenberg and Michael P. Levitt, formerly Vice-Presidents of the Fund, each of whom owned less than 10% of the stock of CCC, also received their proportionate share of the purchase price.

Messrs. Boesel and Wittenberg also sold to Seaboard debentures of CCC in the principal amount of \$80,000 and \$10,000 respectively. On October 30, 1969, Mr. Sprinkel borrowed \$200,000 from Seaboard interest free payable July 31, 1970, or the date of the closing of the purchase of CCC, whichever occurred earlier. At the closing, Mr. Sprinkel paid \$75,000 of the loan and signed a note to Seaboard for \$125,000 due April 1, 1971, bearing interest at the rate of 8% per annum.

Seaboard is a publicly held corporation organized under the laws of Delaware. It is presently engaged through subsidiaries and affiliates, as investment adviser, underwriter, transfer agent and retail distributor of The Income Fund of Boston, Inc., Admiralty Fund and Competitive Capital Fund and as retail distributor for other United States mutual funds in this country and abroad. Other wholly owned subsidiaries of Seaboard are engaged in the operation of insurance and other financial service companies.

### THE PRESENT FUND MANAGER AGREEMENT

Under the present Fund Manager agreement CCC serves as Fund Manager of the assets of the Fund. The Fund Manager administers the allocation among Portfolio Managers of Fund assets from sales of additional Fund shares, coordinates the activities of the Portfolio Managers in order to supervise their compliance with the investment policies of the Fund and the Investment Company Act of 1940 ("1940 Act"), evaluates the performance of the Portfolio Managers and, subject to the approval of the Fund and Fund shareholders, replaces Portfolio Managers when necessary or desirable, continuously evaluates the performance of other investment advisers to be able to recruit additional Portfolio.



# DEFENDANT'S EXHIBIT C

## COMPETITIVE ASSOCIATES INC.

### PROXY STATEMENT

for

### SPECIAL MEETING IN LIEU OF THE ANNUAL MEETING OF SHAREHOLDERS

This statement is furnished in connection with the solicitation of proxies by and on behalf of the management of COMPETITIVE ASSOCIATES INC. ("Fund") to be voted at the Special Meeting in lieu of the Annual Meeting of shareholders of the Fund to be held on September 30, 1970, at 9601 Wilshire Boulevard, Beverly Hills, California, and any adjournment or adjournments thereof.

The expenses in connection with preparing the Proxy, this statement and the solicitation of proxies will be borne by the Fund. In addition to the solicitation of proxies by the use of the mails, directors and officers of the Fund, the Fund Manager and its affiliates, will receive no compensation therefor, may solicit proxies personally or by telephone/teletype.

All proxies which have been properly executed and received in time will be voted at the meeting in accordance with the instructions thereon. The management recommends that shares be voted, and if no choice is specified on the Proxy, the shares will be voted FOR the approval of the matters set forth in proposals 3, 4, and 5, the election as directors of the nominees hereinafter named, and the selection of Haskins & Sells as auditors for the calendar year 1970. The affirmative vote of the holders of a majority (as such term is defined in the Investment Company Act of 1940) of the outstanding shares of the Fund is required for the approval of the matters set forth in proposals 3, 4, and 5. Any shareholder executing a proxy may revoke it in writing by execution of another proxy or by any other legal method at any time before the shares subject to the proxy are voted at the meeting.

Only shareholders of record on the books of the Fund at the close of business on August 21, 1970, will be entitled to vote at the meeting or any adjournment thereof. Each full share of stock outstanding is entitled to one vote. As of August 21, 1970, the outstanding voting securities of the Fund consisted of 2,020,675 shares of common stock. To the knowledge of the Fund, no person holds of record or beneficially more than ten percent (10%) of the outstanding voting stock of the Fund.

### ELECTION OF DIRECTORS

The Board of Directors has set the number of directors at seven and has nominated the following people for election to serve until the next annual meeting of shareholders and until their successors are duly elected and qualified. Management intends to vote the proxies for the nominees listed below. If any nominee is unable or unavailable to serve as a director, which the management does not contemplate, it is intended that the proxy will be voted for the election of such person, if any, as shall be designated by Management.

NAME	PRINCIPAL OCCUPATION	NUMBER OF FUND SHARES BENEFICIAL OWNED DIRECTLY OR INDIRECTLY AT 8/21/70	YEAR FIRST ELECTED DIRECTOR
Michael Risman*	Vice-President of Seaboard Corporation	0	-
Jerome Robert Randolph*	President and Chairman of the Board of Chancellor Management Company	0	-
Henry Homes	Private Investor	0	-
J. Perry Smith*	President of PDI Fund	0	-
Richard E. Boesel, Jr.	Chairman of the Board of the Fund	2500	1969
Arthur J.C. Underhill	Retired Businessman	100	1969
James B. Barron	Executive Vice President and Director, Marriner & Co. Inc. and Officer of its affiliates. (Woolen Manufacturer)	0	-

\*Affiliated Directors

Messrs. Boesel and Underhill who have served as directors since 1969, have previously been elected by shareholders.

## DEFENDANT'S EXHIBIT C

Managers when needed. In addition, the Fund Manager maintains a trading department for centralized purchases and sales of portfolio securities as directed by the Portfolio Managers, computes and publishes the net asset value of the Fund, assumes responsibility for the Fund's compliance with the record keeping and reporting requirements of Federal and State laws and administers distributions to shareholders and other related activities of the Fund. The Fund Manager also furnishes office space to the Fund and pays the ordinary office expenses and the compensation of the employees of the Fund. All other expenses incurred in the operation of the Fund and the continuing public offering of its shares are borne by the Fund. However, if the operating expenses of the Fund in any year (excluding taxes, brokerage commissions, interest and incentive fees) exceed 1% of the average net asset value of the Fund during such year, the Fund Manager will reimburse the Fund for the amount of such excess.

The fees paid by the Fund to the Fund Manager are based upon a system of incentive and competition, whereby good performance is rewarded with a higher rate of compensation. The Fund Manager, on the one hand, and the Portfolio Managers, on the other divide equally between them an investment advisory fee of 1/2 of 1% of net assets, which under certain circumstances may increase to 4% or decrease to zero, depending upon the extent to which the investment performance of the Fund exceeds or is less than the investment performance of the Standard & Poor's Index of 500 stocks ("Index"); however, the Fund Manager will retain the entire fee paid by the Fund, in any year in which the Portfolio Manager's investment performance exceeds the performance of the Index. During the year ended March 31, 1970, neither the Fund Manager nor the Portfolio Managers earned any investment advisory fee.

The present Agreement provides for immediate termination upon its assignment (as that term is defined in the 1940 Act) by the Fund Manager and may be terminated, without the payment of any penalty, by the Fund or the Fund Manager upon 60 days written notice to the other party. The Agreement will continue in effect from year to year, but only if such continuation is approved annually by a majority of the Board of Directors of the Fund, including a majority of those directors who are not parties to the Agreement, officers or employees of the Fund or affiliated persons of any such party or any Portfolio Manager, or by vote of a majority of the outstanding voting securities of the Fund.

The agreement provides that any advice rendered by the Portfolio Manager to the Fund Manager will be used solely for the benefit of the Fund. The agreement provides that the Fund Manager owns the name "Competitive Associates" and the trademark of the Fund and further provides that the Fund Manager may use the name or the trademark and permit such use by others, so long as it is retained as Fund Manager of the Fund. However, the Fund is entitled to use the name and trade mark regardless of whether CCC shall continue to be retained by the Fund as Fund Manager.

### PROPOSED AMENDMENTS TO FUND MANAGER AGREEMENT

In order to insure that the Fund Manager and Portfolio Managers receive a minimum level of compensation, and that the Fund pays incentive compensation out of profits, and to allow the Fund to negotiate an arrangement allowing it possibly to reduce its portfolio brokerage expenses, the following changes in the Fund Manager Agreement are recommended by the Board of Directors:

(1) The fee payable to the Fund Manager, half of which is divided among the Portfolio Managers, will be changed as follows: (a) The Fund will pay a minimum advisory fee of 1/2 of 1% per annum. One half of such fee will be payable to the Fund Manager and the Portfolio Managers will divide the other half in proportion to the assets each advises. (b) The maximum fee will be reduced from 4% to 3 1/2%. If the investment performance of the Fund is less than that of the Index, the amount of the difference will be carried over and applied to reduce an incentive fee payable during the next year (c) No incentive fee will be paid except from increases in the assets of the Fund created by positive investment performance. In other words, incentive fees will only be paid out of either realized or unrealized profits.

The incentive fee payable by the Fund equals 20% of the number of percentage points by which the investment performance of the Fund exceeds that of Standard & Poor's Index of 500 Stocks ("Index"). For example if the Fund's net asset value is up 10% in the same year the Index is up 5%, the incentive fee is 1% of average net assets, equal to 20% of the 5 point difference between the investment performance of the Fund, and that of the Index.

If the above provisions had been in effect for the year ended March 31, 1970, the Fund would have paid \$198,365 to the Fund Manager, one half of which would have been paid to the Portfolio Managers. During the year ended March 31, 1970, the Fund paid no fees to either the Fund Manager or Portfolio Managers.

(2) A provision in the present agreement prohibits the Fund Manager from receiving any compensation in connection with the purchase and sale of portfolio securities by the Fund. The new contract removes this prohibition and specifically allows the Fund Manager and/or its affiliated persons to receive a customary broker's commission and the receipt of reciprocal business, in all forms, in connection with the purchase and sale of securities by or on behalf of the Fund. The Seaboard Planning Corporation ("Planning") and The Seaboard Funds Distributors, Inc. ("Distributors"), both of which are affiliated persons of the Fund Manager, own seats on the Pacific Coast Stock Exchange and Distributors is actively engaged in the brokerage business. If the proposed contract is approved by shareholders, it is expected that the Fund subject to best price and execution will place brokerage transactions with Distributors and that both Distributors and Planning will receive business from brokers who receive Fund brokerage business. It is expected that the Board of Directors of the Fund will negotiate with Distributors and Planning to attempt to insure that a share of the profits of Distributors and Planning on Fund related brokerage transactions will be returned to the Fund in the form of a credit against the Fund Manager's fee. No brokerage business will be placed with Distributors unless and until such an arrangement is negotiated. The Fund will continue to seek the best possible price and execution on all transactions. The Fund Manager has agreed that if a profit sharing arrangement is negotiated, it will be on terms no less advantageous to the Fund than arrangements already in effect between certain subsidiaries of Seaboard and the mutual funds they manage. (See pages 7 and 8.) A description of the arrangement with Admiralty Fund is on page 8. There is no assurance that a profit sharing arrangement with Planning and Distributors will be negotiated or, if one is negotiated, that it will benefit the Fund.



## DEFENDANT'S EXHIBIT C

A copy of the new proposed Fund Manager Agreement is attached to the proxy statement as Exhibit A. Where appropriate, the dates, and language have been changed to reflect the fact that this is a new agreement. Where changes have been made, the language in the present contract is shown in brackets and all new language in the proposed contract is in italics. Neither the language in brackets nor the italics will appear in the actual contract if it is approved.

The foregoing summary of the present agreement and proposed changes therein is qualified in its entirety by reference to Exhibit A, annexed Proxy Statement.

### THE NEW PORTFOLIO MANAGER AGREEMENTS

On February 17, 1970, the shareholders of the Fund approved four identical Portfolio Manager agreements among the Fund, the Fund Manager and its four Portfolio Managers.

Under the terms of the present Portfolio Manager Agreements, each Manager serves as Portfolio Manager of a portion of the net assets of the Fund. The fees paid to the Portfolio Managers, as discussed above on Page 4 are based upon a system of incentives and competition whereby good performance is rewarded by a higher rate of compensation. The Fund Manager, on the one hand, and the Portfolio Manager on the other, divide equally between them an investment advisory fee of 1/2 of 1% of the net assets, which under certain circumstances may increase to 4% or decrease to zero, depending upon the extent to which the investment performance of the Fund exceeds or is less than the investment performance of the Index (see page 4 for a full explanation of the calculation of the incentive fee). However, if in any year none of the Portfolio Managers has an investment performance which exceeds the Index, the Fund Manager will retain the entire investment advisory fee paid by the Fund.

The Portfolio Managers share of the investment advisory fees are divided among them as follows:

1. A Portfolio Manager will receive no fee in a year in which his investment performance does not exceed the investment performance of the Index.
2. If the investment performance of the Portfolio Manager exceeds that of the Index, but is zero or less (i.e., the assets under his advisement have not appreciated in value), such Portfolio Manager will receive a proportionate share of the base fee, if any, paid by the Fund in such year, but does not share in any fee paid by the Fund as a positive incentive adjustment. This occurs only if Fund assets have appreciated in value, the Index has decreased, and the assets under advisement of the Portfolio Manager have not increased or have been reduced, but to a lesser extent than the Index.
3. If the investment performance of the Portfolio Manager exceeds that of the Index and is positive, such Portfolio Manager will receive a proportionate share of the base fee plus a proportionate share of any positive incentive adjustment by the Fund in such year.

The "proportionate share" of the base fee of a Portfolio Manager referred to in paragraphs 2 and 3 above is an amount equal to his proportionate contribution to the extent to which the Fund outperforms the Index. The "proportionate share" of positive incentive adjustment of a Portfolio Manager referred to in Paragraph 3 above is an amount equal to his contribution to any net appreciation in the assets of the Fund in such year, divided by the total amount of the net appreciation of the Fund as a whole in such year.

The Portfolio Manager agreements provide that new money (net of redemptions and assets allocated to newly retained Portfolio Managers) derived from sale of Fund shares during a quarter of a year be allocated among the Portfolio Managers whose investment performance during the preceding four quarters exceeds the Index on the basis of their respective performance ranks during such four quarters, as set forth in the table in Section 11 of the form of Portfolio Manager Agreement attached as Exhibit B to this proxy statement. If less than all Portfolio Managers outperform the Index during the preceding four quarters, the portion of allocable new assets not allocated under the table during the next quarter is allocated to the several Portfolio Managers as the Fund Manager, in its sole discretion, shall determine, but on a consistent and systematic basis. A newly retained Portfolio Manager is allocated assets under a formula provided in the contract which is designed to accelerate his receipt of the initial allocation of assets agreed upon by the Fund Manager and the Portfolio Manager, and at the same time give him one year in which to receive at least a pro rata share of the newer assets, regardless of his performance, subject to the termination provisions discussed below.

Although each Portfolio Manager may and presently does act as an investment adviser to other persons, it has agreed not to render investment advisory services to any other multiple management investment company without the written consent of the Fund Manager.

Each Portfolio Manager agreement provides for immediate termination upon its assignment (as that term is defined in the 1940 A by the Portfolio Manager and may be terminated, without payment of any penalty, by the Fund or Fund Manager upon 30 days' written notice to the other two parties or by any Portfolio Manager upon 60 days' written notice to the Fund Manager.

It is proposed that the new Portfolio Manager Agreements, if approved by the holders of a majority of the outstanding shares of the Fund, will continue in effect for two years and from year to year thereafter, but only if such continuation is approved annually by a majority of the Board of Directors of the Fund, including a majority of those directors who are not parties (the Fund, Fund Manager, Portfolio Manager) to the Portfolio Manager Agreement, officers, employees or affiliated persons (other than as directors) of the Fund or affiliated persons of any such party, or by the vote of a majority of the outstanding voting securities of the Fund.

Other proposed changes in the Portfolio Manager Agreements are as follows:

- (1) As a result of proposed changes in the fee payable to the Fund Manager, the Portfolio Manager will be entitled to receive (i) a



## DEFENDANT'S EXHIBIT C

minimum fee of 1/4 of 1% of the average assets under his advisement and (ii) a maximum fee based upon a maximum total fee of 3 1/2% rather than 4%.

The purpose of this proposal is to assure the Portfolio Managers a minimum level of compensation for the efforts on behalf of the Fund and to reduce maximum compensation.

In order to ensure that incentive fees will only be paid out of profits, the proposed agreement provides that the amount of the incentive fee paid can never exceed the positive investment performance of the Fund. Any incentive fee amount not paid as a result of this provision will be carried forward for three years.

(2) The allocation of new assets from sale of Fund shares is presently made according to a formula. The Agreements are changed to provide that the Fund Manager will have complete discretion in the allocation of new assets. This proposal will allow the Fund Manager greater flexibility in the overall management of the Fund.

A form of the Portfolio Manager Agreement is annexed to the Proxy Statement as Exhibit B. All of the Portfolio Manager Agreements are identical except for the names and addresses of the Portfolio Managers. The Fund has agreed to indemnify the Portfolio Managers and/or their officers, directors and employees on the terms set forth in Section 15 of the attached Agreement. Certain other technical changes in the agreements have been made. All language being deleted from the present agreement is in brackets and all new language is in italics. The above description of the agreement is a summary and is qualified in its entirety by reference to Exhibit B.

None of the Portfolio Managers received an investment advisory fee for services furnished from April 23, 1969 through March 31, 1970.

The fee payable to the Fund and Portfolio Managers is designed so that investment performance less than that of the Index, to the extent it does not reduce the base fee, is carried forward to the next year for purposes of calculating the incentive fee in that year. As a result of this provision, before the Fund Manager or the Portfolio Managers receive any incentive for the year ended March 31, 1971, the investment performance of the Fund will have to be 15.85 percentage points better than the investment performance of the Index, and will have to be positive.

### APPROVAL OR DISAPPROVAL OF THE NEW PORTFOLIO MANAGERS

On June 25, 1970, the Board of Directors voted to replace the present portfolio managers with the companies described below.

1. Takara Asset Management Co., Inc. ("Takara") 342 Madison Avenue, New York, New York, was incorporated in Delaware on July 9, 1970. The names, addresses and principal occupations of the directors and executive officers of Takara are:

NAME AND ADDRESS	POSITION WITH TAKARA	PRINCIPAL OCCUPATION
Akiyoshi Yamada 342 Madison Avenue New York, New York	President and Director	Officer, Director and/or partner of several investment management firms
John C. T. Church 342 Madison Avenue New York, New York	Vice-President, Treasurer and Director Secretary	Officer, Director and/or partner of several investment management firms

The stock of Takara is owned 100% by Mr. Yamada.

2. Shaw Management Company, Incorporated ("Shaw Management"), 442 East 58th Street, New York, New York, 10022, was incorporated in New York on June 24, 1970. All of the stock of Shaw Management is owned by Ralph Shaw who is also the only officer and director of Shaw Management, except for Elba R. Shaw, Mr. Shaw's wife who is Secretary of the Corporation.

Lockton Management Company, Inc. and Forstman-Leff Management Co., Inc. are presently managing the assets of the Fund.

Balance sheets of the Portfolio Managers are attached to the Proxy Statements.

All information concerning the Portfolio Managers has been furnished by them.

### THE FUND MANAGER AND DISTRIBUTOR

Competitive Capital Corporation ("Fund Manager") acts as Fund Manager for the Fund. The Fund Manager is a wholly owned subsidiary of The Seaboard Investment Corporation, a wholly owned subsidiary of Seaboard. The executive offices of each of the foregoing companies are located at 9601 Wilshire Boulevard, Beverly Hills, California.

The Fund Manager also acts as fund manager for Competitive Capital Fund, an investment company with the objective of maximum capital appreciation, which utilizes independent competitive multiple management similar to the Fund. Unlike the Fund, however, Competitive Capital Fund may not seek its objective through the use of speculative investment techniques such as leveraging through borrow-

## DEFENDANT'S EXHIBIT C

selling short and purchasing put and call options. As of July 31, 1970, Competitive Capital Fund had net assets of \$61,938,515.

The present minimum fee paid by Competitive Capital Fund to the Fund Manager is 1/4 of 1% per annum of the average net asset value of the Fund during any year, and the maximum fee is 3/8 of 1% per annum based on performance. The shareholders of Competitive Capital Fund are presently being asked to approve a new Fund Manager Agreement which, among other things, will raise the minimum and maximum fees to 3/8 and 1/2 of 1% respectively. Additional compensation ranging from 1/8 of 1% to 1/2 of 1% of average net assets per annum is paid to Portfolio Managers.

All States Management Company ("All States") which is also a subsidiary of Seaboard, is the investment adviser for Admiralty Fund ("Admiralty"), an investment company which has a Growth, Income and Insurance Series. As of July 31, 1970, Admiralty had net assets of approximately \$37,202,454. For its services as investment adviser, All States is compensated at a rate equivalent to an annual rate of 3/4 of 1% of the average net asset value of Admiralty.

Boston Administrative and Research Company, Inc. ("Administrative") another subsidiary of Seaboard, serves as the investment adviser of the Income Fund of Boston, Inc. ("IFOB") an investment company with an investment objective of providing current income. As of July 31, 1970, IFOB had net assets of approximately \$35,208,124. For its services as investment adviser, Administrative is compensated at the annual rate of 1/2 of 1% of the first \$75 million of net assets and 4/10 of 1% of all net assets over \$75 million.

The names, addresses and principal occupations of the directors and principal officers of the Fund Manager are:

NAME AND ADDRESS	POSITION WITH FUND MANAGER	PRINCIPAL OCCUPATION
Jerome R. Randolph 601 Wilshire Boulevard Beverly Hills, California	President	President and Chairman of the Board of Chancellor Management Company.
Frank V. Deegan 9601 Wilshire Boulevard Beverly Hills, California	Director	Senior Vice-President and Director of Seaboard
Irwin Solomon 9601 Wilshire Boulevard Beverly Hills, California	Director	President and Director of Seaboard
John A. Coe, Jr. 601 Wilshire Boulevard Beverly Hills, California	Director	Senior Vice President and Director of Seaboard
Michael Risman 9601 Wilshire Boulevard Beverly Hills, California	Secretary	Vice-President of Seaboard
Walter Latimer 9601 Wilshire Boulevard Beverly Hills, California	Treasurer	Officer and/or director of various affiliates of Seaboard

The Balance Sheet of the Fund Manager at December 31, 1969, certified by its accountants, Lybrand, Ross Bros. & Montgomery, is attached to the proxy statement. An unaudited balance sheet of June 30, 1970 is included.

Until November 30, 1969, the Fund Manager served as principal distributor of the Fund, and retained \$13,174 in gross revenue as its portion of the commissions paid by investors purchasing shares of the Fund after reallowing \$80,178 to the investment dealers who sold the shares, but before deducting its distributing expenses.

Since December 1, 1969, The Seaboard Funds Distributors, Inc. ("Distributors"), 9601 Wilshire Boulevard, Beverly Hills, California, a subsidiary of Seaboard, has acted as the principal distributor for the Fund. For its services from December 1, 1969 to March 31, 1970, Distributors retained \$5,166 in gross revenue as its portion of the commissions paid by investors purchasing shares of the Fund after allowing \$23,379 to the investment dealers who sold the shares, but before deducting its distributing expenses. The Seaboard Planning Corporation ("Planning") a subsidiary of Seaboard, sold no shares during that period.

An affiliate of Seaboard acts as transfer agent for all the aforementioned mutual funds and for the Fund. During the year ended March 31, 1970, the funds paid \$118,398 for such services.

The officers of Distributors are Don Lee Ferrari, President; Roger Stephens, Vice President; Alan Markizon, Secretary; and Walter Latimer, Treasurer. Messrs. Ferrari, Latimer and Frank V. Deegan, an officer of Seaboard, are the Directors of Distributors.

### PORTFOLIO TRANSACTIONS

Although the Portfolio Managers made all the investment decisions for the Fund, the Fund Manager is responsible for selecting brokers and insuring that the fund obtains best price and execution for its orders.



## DEFENDANT'S EXHIBIT C

Brokerage transactions with respect to portfolio securities of the Fund are executed from time to time with securities dealers who engage in sales of fund shares. In addition, brokerage is allocated to firms that furnish statistical, research, investment advisory or other services to the Fund Manager or Portfolio Managers. The information received has no independent dollar value and since it is only supplementary to the Fund or Portfolio Managers' own efforts, its receipt does not necessarily reduce their own efforts nor does it receipt necessarily reduce the Managers' expenses. No formula, criteria, arrangements or methods of allocation exist between the Fund and securities dealers with respect to allocation or direction of brokerage transactions to such dealers. In no event will any transaction be made by the Fund if, as a result, the Fund would not obtain the most favorable price and execution. It is the policy of the Fund to seek the highest possible price on sales and the lowest possible price on purchases of securities consistent with the best execution. During the year ended March 31, 1970, the Fund experienced a portfolio turnover rate of approximately 296%. This portfolio turnover is the equivalent of the Fund selling all of its portfolio securities three times in one year. Because the new Portfolio Managers may wish to acquire different securities from those presently owned by the Fund the portfolio turnover for this year may be substantially higher.

Since each of the several Portfolio Managers manages the assets under advisement by him independently, two or more Portfolio Managers may simultaneously decide to buy and sell a particular security. To the extent possible, such orders are executed internally by the Fund and there is no brokerage or other charge with respect thereto. By reason of its continual communication with the various Portfolio Managers, the Fund Manager may be able to facilitate such internal execution of orders, but this will be contingent upon the determination of two Portfolio Managers to trade at the same time. During the year ended March 31, 1970, the Fund paid total brokers' commissions of \$1,166,727 including \$40,284.71 to Riter & Co., a former affiliate of Gibraltar Research and Management Company ("Gibraltar") which was a Portfolio Manager for the Fund.

On April 30, 1970, a transfer of control of Gibraltar was effected and its Portfolio Manager agreement terminated. Pursuant to the Portfolio Managers' contracts, on May 13, 1970, the Board of Directors of the Fund distributed the assets that were managed by Gibraltar equally between two of the Portfolio Managers, Atlanta Asset Management Corp., and Forstmann-Leff Management Co., Inc.

As set forth on page 4 of this Proxy Statement, if shareholders approve the new Fund Manager Agreement it is anticipated that the Board of Directors will negotiate an arrangement with The Seaboard Funds Distributors, Inc. ("Distributors") and The Seaboard Planning Corporation ("Planning"), both of which are subsidiaries of Seaboard and members of the Pacific Coast Stock Exchange ("PCSE"), which will allow the Fund to recapture some of its portfolio brokerage expenses.

Admiralty Fund ("Admiralty"), has informed that Fund that it presently has an arrangement with Distributors and Planning providing that it will place portfolio brokerage transactions with Distributors which is actively engaged in the brokerage business, and with brokers who will as a result of receiving business from Admiralty on other exchanges place orders on the PCSE through Distributors and Planning.

All tender fees and underwriting commissions received by Distributors and Planning on transactions related to Admiralty are returned to Admiralty in the form of a credit against its investment advisory fee. In addition, the investment advisory fee is reduced by an amount equal to 50% of the profits net of federal income tax, earned by Distributors and Planning, on brokerage transactions directly or indirectly generated by Admiralty. The profit of Distributors and Planning is calculated in accordance with generally accepted accounting principles and on the assumption that each company will pay federal income tax at the then current rate.

The investment adviser of Admiralty has also agreed that all credits against the investment advisory fee resulting from the return of brokerage or the receipt of transfer fees or underwriting commissions will not be considered as a reduction of expenses for purposes of determining whether Admiralty's expenses exceed the maximum payable by Admiralty. This provision insures that if Distributors and Planning earn a profit or receive any tender or underwriting fees on brokerage transactions generated directly or indirectly by Admiralty the expenses of Admiralty will be reduced.

The Income Fund of Boston, Inc. has informed the Fund that it has an identical arrangement with Distributors and Planning.

If the Board of Directors of the Fund negotiates an arrangement for the partial recapture of portfolio brokerage expense, it will be on terms no less favorable than that in effect with Admiralty Fund and will call for the management fee to be credited monthly. To the extent that Distributors and Planning earn a profit on fund related transactions, the Fund would benefit from the placement of business as described above. There is, however, no assurance that Distributors or Planning would earn a profit on such transactions. Since the Fund would continue to seek best execution in all cases and existing stock exchange rules prevent the Fund from obtaining reductions in brokerage commissions, except through arrangements similar to that described above, the expenses of the Fund may decrease but will not increase if such an arrangement is negotiated.

### OTHER BUSINESS

The Management knows of no other business to be brought before the meeting. However, if any other matters properly come before the meeting, it is the intention that proxies which do not contain instructions to the contrary will be voted on such matters in accordance with the judgment of the persons designated in the enclosed proxy.

BY ORDER OF THE BOARD OF DIRECTORS

September 11, 1970  
Beverly Hills, California

Michael Risman  
Secretary of the Corporation



# DEFENDANT'S EXHIBIT F

PORTFOLIO MANAGER AGREEMENT dated as of the 9 day of *Oct*, 1970, by and among COMPETITIVE INVESTMENT FUND, a corporation organized and existing under the laws of the State of Delaware ("Fund"), COMPETITIVE INVESTMENT FUND CORPORATION, a corporation organized and existing under the laws of the State of California ("Fund Manager") and the Fund Manager.

The Fund is a management investment company registered under the Investment Company Act of 1940, as amended. The Fund entered into an agreement with the Fund Manager pursuant to which the Fund has authorized the Fund Manager to manage the business of the Fund as more particularly described in said agreement and, subject to approval by the Fund, to retain advisors, manage a portion of the Fund's assets and to render investment advisory and other related services. The Fund and the Fund Manager desire to retain the Fund Manager to so manage a portion of the Fund's assets and to render other services as provided in, and the Fund Manager has indicated its willingness to do so upon the terms and conditions hereinafter set forth. NOW, THEREFORE, in consideration of the premises and the representations, warranties and agreements contained herein, the parties hereto, intending legally to be bound, agree as follows:

1. Whenever used herein, the terms listed below will have the following meanings:

- (a) Year. Year will mean the fiscal year of the Fund.
- (b) Business Day. Business Day will mean each day on which the New York Stock Exchange is open for business.
- (c) Quarter. Quarter will mean the period beginning on the first Business Days of January, April, July and October and ending on the last Business Days of March, June, September and December of each year.
- (d) Security. Security will mean any note, stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, contract, option contract, voting trust certificate, certificate of deposit for a security, fractional undivided interest in real estate, or other mineral rights or, in general, any interest or instrument commonly known as a "Security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to, or purchase of the foregoing.
- (e) Assets of the Fund. Assets of the Fund as at any time will mean that portion of the Assets of the Fund which the Fund Manager has, by written notice to the Portfolio Manager, allocated to the account of the Portfolio Manager as of such time, with all estimates, reinvestments and proceeds of the sale thereof, including all appreciation thereof and additions thereto, less depreciation and withdrawals therefrom.
- (f) Liabilities of the Fund. Liabilities of the Fund as at any time will mean the liabilities of the Fund as determined by or pursuant to the direction of the Board of Directors of the Fund.
- (g) Portfolio Manager's Share of Liabilities of the Fund. Portfolio Manager's Share of Liabilities of the Fund for the purpose of computing "Net Assets Under Advisement" as at any time will mean an amount equal to the product of:
  - (i) The Liabilities of the Fund at such time, determined according to generally accepted accounting principles; and
  - (ii) A fraction, the numerator of which is the Assets Under Advisement by the Portfolio Manager at such time and the denominator of which is the Assets of the Fund at such time; provided, however, that to the extent that a liability is created on the part of the Fund by reason of (A) any Securities purchased or sold short by a Portfolio Manager or (B) any distribution declared by the Fund out of income or realized gains or (C) any borrowing effected at the request of a Portfolio Manager, such liability will be attributed to the Share of Liabilities of the Fund of the Portfolio Manager which purchased such Securities or generated such income or gains or requested such borrowing, and shall not be included in the Share of Liabilities of other Portfolio Managers.
- (h) Net Assets Under Advisement. Net Assets Under Advisement will mean an amount equal to the Assets Under Advisement less the Portfolio Manager's Share of Liabilities of the Fund.
- (i) Units Under Advisement. Units Under Advisement as at any time will mean an amount equal to the number of shares of the Fund outstanding or to be outstanding at the time of the initial allocation of Assets of the Fund to the Portfolio Manager by the Fund Manager hereunder multiplied by a fraction, the numerator of which is the Assets of the Fund which the Fund Manager has, by written notice to the Portfolio Manager, initially allocated to the account of the Portfolio Manager and the denominator of which is the Assets of the Fund at the time of such allocation of Assets of the Fund to the Portfolio Manager, all adjusted from time to time, as follows:
  - (i) If after such initial allocation additional assets shall be allocated to the account of the Portfolio Manager in accordance with the provisions of Sections 11, 12, and 13 hereof, the number of Units Under Advisement will be increased by an amount equal to the value of such additional assets divided by Net Asset Value Per Unit at the time of such allocation;
  - (ii) If after such initial allocation withdrawals shall be made from the Assets Under Advisement by the Portfolio Manager in respect of repurchases or redemptions of Fund shares in accordance with the provisions of Section 14 hereof, the number of Units Under Advisement will be decreased by an amount equal to such withdrawals divided by Net Asset Value Per Unit at the time of such repurchases or redemptions.
- (j) Net Asset Value Per Unit. Net Asset Value Per Unit as at any time will mean Net Assets Under Advisement at such time divided by Units Under Advisement at such time.
- (k) Adjusted Net Asset Value Per Unit. Adjusted Net Asset Value Per Unit as at any time during a period in which investment performance is computed will mean an amount equal to Net Asset Value Per Unit, unless during such period a liability has accrued on the books of the Fund in respect of a distribution of realized gains paid or to be paid by the Fund on Fund shares, in which event Adjusted Net Asset Value Per Unit will mean an amount determined by multiplying (i) Net Asset Value Per Unit immediately following the accrual of such liability in respect of such distribution by (ii) the sum of (A) one and (B) a fraction, the numerator of which is the amount of the distribution so paid or to be paid and the denominator of which is the Net Assets Under Advisement immediately following the accrual of such liability in respect of such distribution.
- (l) Investment Performance.
- (m) Investment Performance of a Portfolio Manager. ("IP"), (positive or negative) for any period will mean the fraction

## DEFENDANT'S EXHIBIT F

expressed as a percentage, derived by dividing the difference between the Adjusted Net Asset Value Per Unit at the close of business on the last Business Day of such period ("U<sub>2</sub>") and the Net Asset Value Per Unit at the close of business on the last Business Day of the next preceding period ("U<sub>1</sub>") by the Net Asset Value Per Unit at the close of business on the last Business Day of the next preceding period (expressed as a Formula:

$$P = \frac{U_2 - U_1}{U_1} \times 100$$

(ii) Positive Investment Performance will mean the fraction, expressed as a percentage, derived by making the computation under Paragraph (i) of this Subsection (k) when U<sub>2</sub> is greater than U<sub>1</sub>.

(iii) Negative Investment Performance will mean the fraction, expressed as a percentage, derived by making the computation under Paragraph (i) of this Subsection (k) when U<sub>2</sub> is less than U<sub>1</sub>.

(l) Cumulative Investment Performance. Cumulative Investment Performance for any period will mean Investment Performance computed for the period beginning on the first day of a Year and ending on the last day of the period as of which Investment Performance is being determined.

(m) Average Net Assets Under Advisement. Average Net Assets Under Advisement for any period will mean an amount computed as of the close of business on the last Business Day of such period by dividing the sum of the Net Assets Under Advisement as of the close of business on each Business Day during such period by the total number of such Days.

(n) Index. Index will mean the Standard & Poor's Index of 500 stocks.

(o) Positive or Negative Performance of the Index. Positive or Negative Investment Performance of the Index for any period will mean the fraction, expressed as a percentage, derived by dividing the difference between the Index as of the close of business on the last Business Day of such period and the Index at the close of business on the last Business Day of the next preceding period by the Index at the close of business on the last Business Day of the next preceding period.

(p) Excess Performance Differential.

(i) Excess Performance Differential (positive or negative) of the Fund or a Portfolio Manager will mean the difference in percentage points between the Investment Performance of the Fund or Portfolio Manager and the Investment Performance of the Index.

(ii) Positive Excess Performance Differential in any period will mean the number of percentage points by which the Investment Performance of the Fund or Portfolio Manager exceeds the Investment Performance of the Index.

(iii) Negative Excess Performance Differential in any period will mean the number of percentage points by which the Investment Performance of the Index exceeds the Investment Performance of the Fund or Portfolio Manager.

(q) Net Assets from Sale of Shares. Net Assets from Sale of Shares will mean an amount equal to the aggregate assets paid into the Fund from the sale of Fund shares (excluding automatic reinvestment) during any day after the consummation of the initial public offering, less all repurchases and redemptions of Fund shares during each day.

(r) Allocable New Assets. Allocable New Assets will mean an amount equal to Net Assets from Sales of Shares (less the portion thereof which is allocable by the Fund Manager to additional Portfolio Managers pursuant to Section 13 of this Agreement.)

(s) Fund Policies. Fund Policies will mean the policies and restrictions referred to in Section 4 of this Agreement.

(t) Pro-Rata Share. Except as otherwise specifically provided, Pro-Rata Share will mean a fraction, the numerator of which is Net Assets Under Advisement and the denominator of which is the Assets of the Fund, less the Liabilities of the Fund.

(u) Net Appreciation. Total appreciation less expenses.

All other terms herein shall have the same meaning as when used in the Investment Company Act of 1940, as amended ("1940 Act"), where applicable, as construed and interpreted by the Securities and Exchange Commission and judicial decisions thereunder.

2. Subject to the approval of the Fund, hereby given by the Fund, and as more particularly described herein, the Fund Manager will and hereby does retain the Portfolio Manager to manage the Assets Under Advisement and render investment advisory and other related services to the Fund and the Fund Manager with respect to the Assets Under Advisement so long as this Agreement remains in effect, and the Portfolio Manager will and hereby does accept such retainer.

3. The Fund Manager represents and warrants to the Portfolio Manager that:

(a) The Fund Manager has entered into an agreement with the Fund ("Fund Manager Agreement") pursuant to which the Fund has authorized the Fund Manager to manage the assets of the Fund as more particularly described in said agreement and, subject to approval by the Fund, to retain Portfolio Managers pursuant to agreements similar to this Agreement. A copy of the Fund Manager Agreement, as from time to time in effect, will be furnished to the Portfolio Manager.

(b) The Fund Manager has entered into or will enter into agreements with Portfolio Managers other than the Portfolio Manager for services of the same general kind as those to be performed by the Portfolio Manager hereunder. Such agreements will be substantially in the form of this Agreement and will contain like provisions with respect to the computation of fees, the allocation of new assets paid into the Fund, withdrawal of assets from any of the Portfolio Managers' accounts and termination of employment.

4. The Portfolio Manager represents and warrants to the Fund Manager that:

(a) The Portfolio Manager has read carefully the Fund's policies and restrictions and with respect to securities investments as set forth in the Fund's Registration Statement under the 1940 Act on Form N-51-1 and the Registration Statement under the Securities Act of 1933, as amended covering the Fund's shares on Form S-5, including the Prospectus forming a part thereof, all as originally filed with the Securities and Exchange Commission on February 24, 1969, and, except as provided in Section 7 of this Agreement, will manage the Assets Under Advisement in accordance with such policies and restrictions, as from time to time amended, and with the provisions of the securities laws contained in the 1940 Act.

(b) Except as provided in Subsection (c) of Section 7 of this Agreement, the Portfolio Manager will manage the Assets Under Advisement so that less than 30% of the gross income in respect thereof will be derived during any Year from the sale or other disposition of Securities held for less than three months. (The determination of the period for which Securities have been held shall be governed by the provisions of Section 1223 of the Internal Revenue Code, insofar as applicable.)

(c) The Portfolio Manager is registered or is exempt from registration under Section 203 of the Investment Adviser's Act of 1940, will continue to be registered or exempt from such registration and will comply with the provisions of the 1940 Act relating to the services to be rendered hereunder, to the extent applicable.



## DEFENDANT'S EXHIBIT F

The Portfolio Manager will manage the Assets Under Advisement in accordance with the provisions hereof and will make to the Fund and Manager, to the extent reasonably required in the conduct of the business of the Fund requests relating to (i) purchases and sales of Securities in respect of the Assets Under Advisement, and (ii) the borrowing of money by the Fund to be allocated to the Assets Under Advisement, all in accordance with Section 4 of this Agreement. The Portfolio Manager may, in the rendition of its services hereunder, obtain information and/or assistance from any persons, firms or corporations that it deems reliable, on terms as it deems and determines in its discretion; provided, however, in no event will the Fund or Fund Manager incur any liability or obligation to such persons, firms or corporations.

5. In the event of any change in Fund Policies, the Fund Manager will forthwith provide the Portfolio Manager with the information concerning such change, including any amendments to the Fund's Registration Statements on Form N-8B-1 and Form S-5, or those referred to in Subsection (a) of Section 4 of this Agreement and will furnish the Portfolio Manager with a current effective Prospectus. The Fund Manager will provide the Portfolio Manager with such information concerning Fund Policies as the Portfolio Manager may from time to time request.

7. All purchases and sales of Securities with respect to the Assets Under Advisement will be made by the Fund Manager upon request from the Portfolio Manager, provided that such purchase or sale is consistent with Fund Policies, the 1940 Act and the Fund's status as a regulated investment company within the meaning of Subchapter M of the Internal Revenue Code of 1954, as amended, it being understood that any determination with respect to Fund Policies and the Fund's status as a regulated investment company will be made by the Fund Manager, and any such determination will be binding on the Portfolio Manager.

(a) Upon request of a Portfolio Manager, the Fund Manager will use its best efforts to cause the Fund to borrow an amount of money which does not exceed 50% of the Assets Under Advisement (which term, as used in this Subsection (a) of Section 7, shall not include the amount borrowed) of such Portfolio Manager at the time of such request and allocate such amount to the account of such Portfolio Manager; provided, however, the Fund Manager may, from time to time, in its sole discretion cause the Fund to borrow an amount of money in excess of 50% of the Assets Under Advisement of such Portfolio Manager and allocate such amount to such Portfolio Manager; and provided further, upon request of the Fund Manager, the Portfolio Manager will forthwith pay the amount of such excess to the Fund Manager. In no event shall the aggregate amount borrowed by the Fund at any time exceed 50% of the Assets of the Fund (which term, as used in this Subsection (a) of Section 7, shall not include the amount borrowed) at such time. If by reason of a decline in the market value of the Assets of the Fund, the aggregate amount borrowed by the Fund exceeds 50% of the Assets of the Fund, upon request of the Fund Manager the Portfolio Manager out of the Assets Under Advisement, will forthwith pay to the Fund Manager, who will repay to the Fund, an amount such that the amount borrowed by the Fund in respect of the Portfolio Manager pursuant to this Section 7 will not exceed 50% of the Assets Under Advisement of such Portfolio Manager.

(b) In determining whether or not the purchase or sale of a specific Security is consistent with Fund Policies, the Fund Manager will consider, among other things, the then current portfolio of the Fund and any other prior unexecuted requests for purchase or sale of such Security from any other Portfolio Manager, the percentage of the total assets of the Fund invested in put and call options and the percentage of the assets of the Fund invested in Securities sold short. If compliance with a request to purchase or sell a Security from the Portfolio Manager would otherwise cause a violation of Fund Policies, the Fund Manager will notify the Portfolio Manager to such effect; however, such request will be complied with in part to the extent consistent with Fund Policies. The Fund Manager will act upon requests to buy or sell Securities in the order of receipt thereof in time. If the Fund Manager should receive from the Portfolio Manager and any other Portfolio Manager simultaneous requests to buy or sell a Security, the Fund Manager will act upon such requests in proportion to such Portfolio Managers' respective Pro-Rata Shares. The Fund will accept requests of Portfolio Managers to buy and sell the same Security to the extent possible and consistent with its other responsibilities. A request of a Portfolio Manager to purchase a specific Security or a call thereon will not be honored if (i) a prior request received from another Portfolio Manager to sell such Security short or to purchase a put option written on such Security or (ii) a prior request is executed and the short position or put option is not yet liquidated. Any request by a Portfolio Manager to sell a specific Security short or purchase a put option with respect to such Security will not be honored if (i) a prior request is received from another Portfolio Manager to purchase such Security or a call thereon, or (ii) such Security or a call thereon is currently in the portfolio of the Fund. Notwithstanding the foregoing, the Fund Manager may, from time to time, in its sole discretion, permit a Portfolio Manager to invest in a Security an amount in excess of its Pro-Rata Share of the aggregate amount which the Fund is permitted to invest in such Security under Fund Policies.

(c) In determining whether or not the sale of a specific Security is consistent with the Fund's status as a regulated investment company within the meaning of Subchapter M of the Internal Revenue Code of 1954, as amended, the Fund Manager will consider, among other things, the percentage of gross income in respect of the Assets Under Advisement and the assets under advisement of all Portfolio Managers derived during the current Year from the sale or other disposition of Securities held for less than three months. If a specific Security should be sold by the Portfolio Manager in a transaction in which such Security becomes part of the assets under advisement of any other Portfolio Manager and no gain or loss is recognized for federal income tax purposes, the sale will be deemed not to have been made, and no brokerage commissions or other charge will be made in respect thereof. Notwithstanding the foregoing, the Fund Manager may from time to time, in its sole discretion, waive the requirement that the Portfolio Manager derive less than thirty percent of the gross income in respect of the Assets Under Advisement by it from the sale or other disposition of Securities held for less than three months.

8. The officers of the Portfolio Manager will be available at all times upon reasonable notice for consultation with the directors and officers of the Fund and the Fund Manager in connection with the investment of the Fund's assets.

9. The Portfolio Manager will, from time to time as the Fund Manager or the Fund may request, deliver to the Fund and the Fund Manager a schedule setting forth the Securities owned, beneficially or of record, by its officers and directors and any material changes therein.

10. (i) In any Year the Fund Manager will pay to the Portfolio Managers, as fees for services rendered by such Portfolio Managers under their respective agreements with the Fund and Fund Manager, an aggregate amount equal to 50% of (i) the base fee and



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the positive incentive adjustment (as such terms are defined in the Fund Manager Agreement), if any, earned and paid in such year, pursuant to Section 13 of the Fund Manager Agreement. Subject to paragraph (1) of this Subsection (a) of Section 10, the portion of such aggregate amount which will be paid to each Portfolio Manager will depend upon his Investment Performance and will be determined as follows:

(1) A Portfolio Manager will receive no incentive fee in a Year in which his Investment Performance does not exceed the Investment Performance of the Index.

(2) If the Investment Performance of the Portfolio Manager exceeds that of the Index, but is zero or less, such Portfolio Manager will receive his proportionate share of the base fee, if any, paid by the Fund in such Year to the Fund Manager pursuant to Section 13 of the Fund Manager Agreement. Such Portfolio Manager, however, will receive no portion of the aggregate amount paid to the Portfolio Managers in respect of the positive incentive adjustment earned and paid to the Fund Manager in such Year. This could occur only if the Investment Performance of the Fund is positive, that of the Index is negative, and that of the Portfolio Manager is either zero or negative, but in any case greater than that of the Index.

(3) If the Investment Performance of the Portfolio Manager exceeds that of the Index and is greater than zero, such Portfolio Manager will receive his proportionate share of the base fee plus his proportionate share of any positive incentive adjustment (as hereinafter defined) earned and paid to the Fund Manager in such Year.

The "proportionate share of the base fee" of a Portfolio Manager referred to in Paragraphs 2 and 3 of this Subsection (a) will equal a fraction, the numerator of which will be the Average Net Assets under his management and the denominator of which is the Average Net Assets of the Fund. The "proportionate share of the positive incentive adjustment" of a Portfolio Manager referred to in Paragraph 3 of this Subsection (a) will be an amount equal to such Portfolio Manager's contribution to any net appreciation in the assets of the Fund in such Year divided by the total amount of the net appreciation of the Fund as a whole in such Year.

(b) If this Agreement should be terminated pursuant to Section 21 of this Agreement at any time other than the Last Business Day of a Year, the fee payable to the Portfolio Manager in respect of services rendered during the Year in which such termination takes place shall be computed by multiplying the fee to which the Portfolio Manager would be entitled assuming its termination takes place on the Last Business Day of the Year by a fraction, the numerator of which is the Excess Performance Differential of the Fund (which for the purpose of this Subsection (b) of Section 10 shall be the difference between the Cumulative Investment Performance of the Portfolio Manager or Fund and the Cumulative Investment Performance of the Index) as of the day on which such termination took place were the respective Excess Performance Differentials for the entire Year, by a fraction, the numerator of which is the number of Business Days that have elapsed during such Year and the denominator of which is the normal number of business days in such Year.

(c) If any Portfolio Manager assumes his duties on any day other than the first day of a Year, the base fee payable to him for the remainder of the Year will be the product of the Average Net Assets under his management, a fraction, the numerator of which is the number of Business Days he acted as Portfolio Manager and the denominator of which is the number of Business Days in that Year, and the base fee. His share of any Positive Incentive Adjustment will be computed in accordance with Subsection (a) of this Section (10).

The Portfolio Manager will accept the above fee as full compensation for all services rendered by it hereunder. The Portfolio Manager will bear all expenses and disbursements incurred by it with respect to the rendition of the services hereunder, and neither the Fund Manager nor the Fund will have any liability therefor.

11. (a) Allocable New Assets will be allocated to the various Portfolio Managers at the discretion of the Fund Manager.

(b) The Portfolio Manager, by giving written notice to the Fund Manager at least 30 days prior to the effective date of such election, may elect not to share in Allocable New Assets. However, if at any time more than one Portfolio Manager so elects, the Fund Manager may allocate assets to a Portfolio Manager despite such notice.

12. All new Assets paid into the Fund from the sale of Fund shares under the automatic reinvestment plan shall be allocated by the Fund Manager to the Portfolio Manager to the extent that such Assets are attributable to dividends and distributions declared by the Fund out of income and realized gains generated by the Portfolio Manager. Investments and reinvestments of Assets Under Advisement of portfolio Securities, shall be treated as part of Assets Under Advisement for all purposes, shall not be deemed to be additional assets for the purpose of adjusting Units Under Advisement pursuant to Subsection (i) of Section 1 of this Agreement, and shall be allocated by the Fund Manager to the Portfolio Manager to the extent that such investments and investments and such income were generated by the Portfolio Manager.

13. The Fund Manager may, from time to time, substitute or retain additional Portfolio Managers. In such event, the Fund Manager will have complete discretion in the allocation of assets to such additional Portfolio Managers.

# DEFENDANT'S EXHIBIT F

- (i) As may be required by the provisions of the 1940 Act,
  - or
  - (ii) Upon termination of this Agreement,
  - or
  - (iii) As required from time to time in connection with net redemptions and repurchases by holders of shares of the Fund or in connection with payment of Liabilities of the Fund, including, among other things, payment of management fees and dividends or other distributions on the shares of the Fund, in which event such withdrawal will be computed as follows:  
The amount to be withdrawn from the Assets Under Advisement will be an amount equal to the Product of:  
(A) The amount to be paid by the Fund in respect of such redemptions, repurchases or liabilities; and  
(B) A fraction, the numerator of which is the Net Assets Under Advisement as of the last day of the Quarter next preceding the withdrawal and the denominator of which is the Net Assets of the Fund as of such time; provided, however, that the amount of any withdrawal that is made in connection with payment of any Liabilities of the Fund in respect of dividend or other distributions declared by the Fund out of income or realized gains, shall be withdrawn from Assets Under Advisement only to the extent that such distributions from income or realized gains are attributable to Assets Under Advisement of the Portfolio Manager.
15. The Portfolio Manager will not be liable for any loss sustained by reason of the adoption or implementation of any investment policy, or the purchase, sale or retention of any security in the Assets Under Advisement, whether or not such purchase, sale or retention is based upon its request or its own investigation and research or upon investigation and research made by any other individual, firm or corporation; provided, however, that nothing herein contained will be construed to protect the Portfolio Manager against any liability to the Fund Manager or the Fund or the Fund's security holders by reason of willful misfeasance, bad faith, or gross negligence in the performance of the Portfolio Manager's duties or by reason of its reckless disregard of its obligations and duties under this Agreement.
- The Fund will indemnify and hold harmless the Portfolio Manager, or any officer, director or employee of the Portfolio Manager, from and against all reasonable expenses incurred in the successful defense of any action, suit or proceeding in connection with any acts of the Portfolio Manager, or any officer, director or employee of the Portfolio Manager taken in accordance with this Agreement in good faith and without negligence.
16. Neither the Portfolio Manager nor any officer, director or shareholder of the Portfolio Manager will act as principal or receive any compensation in connection with the purchase or sale of Securities by or on behalf of the Fund other than the compensation provided for in this Agreement, provided, however, that nothing herein contained shall be deemed to prohibit the payment to the Portfolio Manager of a standard brokerage commission payable in respect of an order of the Fund so long as the Portfolio Manager is the executing broker and performs a brokerage function in connection therewith.
17. This Agreement will take effect on the day it is approved by shareholders of the Fund. It will, subject to the termination provisions, remain in effect for a period of two years and will continue in effect from year to year thereafter, but only if the continuation is specifically approved annually not earlier than sixty days before the expiration date, by a majority of the Board of Directors of the Fund, including a majority of the directors who are not parties to the Agreement, officers or employees of the Fund or affiliated persons of the Fund Manager or any Portfolio Manager or by the vote of a majority of the outstanding voting shares of the Fund.
18. Except as provided in Section 16 of this Agreement, nothing herein will in any way limit or restrict the Portfolio Manager or any of its officers, shareholders or employees from buying, selling or trading in any Securities for their own account or for the account of any firm or corporation in which they have an interest or with which they are affiliated. Except as provided in Section 23 of this Agreement, the Portfolio Manager may act as an investment adviser to any person, firm or corporation and perform management and other services for any other person, association, corporation, firm or other entity pursuant to any contract or otherwise, and take any action or do anything in relation therewith or related thereto; and no such performance of advisory management or other services or taking of any such action or doing of any such thing will be in any manner restricted or otherwise affected by any aspect of any relationship of the Portfolio Manager to or with the Fund or the Fund Manager or deemed to violate or give rise to any duty or obligation of the Portfolio Manager to the Fund or the Fund Manager. Subject to the obligation of the Portfolio Manager to allocate investment opportunities on a pro rata basis to all its accounts for which they are appropriate, if cash in any particular account is available and if the individuals in charge of such accounts approve, and to allocate securities to such accounts on the basis of priorities subject to regular rotation when the market supply is inadequate for a distribution to all accounts, the Fund and the Fund Manager each recognize that the Portfolio Manager, in effecting transactions for its various accounts, may not always be able to take or liquidate investment positions in the same security at the same time and at the same price.
19. The Fund and the Fund Manager will not approve or authorize the use or distribution, in connection with the offering of its Common Stock for sale, any literature or advertisements in any form or through any medium which contains provisions concerning the Portfolio Manager and its duties, unless not less than ten (10) days prior to the giving of such approval by the Fund or Fund Manager, the Fund or Fund Manager shall have submitted such literature or advertising containing such provisions to the Portfolio Manager, and the Portfolio Manager, within ten (10) days, shall have failed to disapprove of such provisions.
20. This Agreement will automatically and immediately terminate in the event of its assignment by the Portfolio Manager.
21. This Agreement may be terminated without payment of any penalty:
- (a) By the Fund, upon thirty days' notice in writing to the Fund Manager and the Portfolio Manager;
  - (b) By the Fund Manager, upon thirty days' notice in writing to the Portfolio Manager; and
  - (c) By the Portfolio Manager, upon sixty days' notice in writing to the Fund Manager.
22. In the event of the termination of the Agreement between the Fund and the Fund Manager, this Agreement will not there-  
be terminated and will continue in full force and effect for the respective benefits of the Fund and the Portfolio Manager, and if a successor fund manager is retained and becomes a party to this Agreement, or similar agreement, the rights and obligations of the Fund Manager in this Agreement will be assumed and performed by the Fund.



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23. During the term of this Agreement, the Portfolio Manager will not act as an investment manager of or render investment advisory or related services to any multiple management investment company with independent Portfolio Management registered under Investment Company Act of 1940 or whose shares are sold exclusively outside of the United States, without the written consent of Fund Manager.

24. The Portfolio Manager is an independent contractor and not an employee of the Fund Manager or the Fund for any purpose.

25. This Agreement states the entire agreement of the parties hereto, and is intended to be the complete and exclusive statement of the terms hereof. It may not be added to or changed orally, and may not be modified or rescinded except by a writing signed by all the parties hereto and in accordance with the 1940 Act, where applicable.

26. Any notice pursuant to this Agreement may be delivered in person or sent by mail (postage prepaid and, if to a different address, via air mail), or by telegram as follows:

(a) In the case of notices sent to the Fund, to:

Competitive Associates Inc.  
9601 Wilshire Boulevard  
Beverly Hills, California 90210

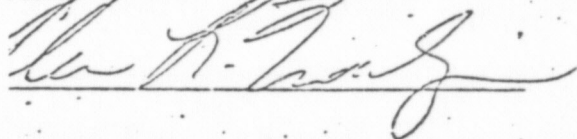
(b) In the case of notices sent to the Fund Manager, to:

Competitive Capital Corporation  
9601 Wilshire Boulevard  
Beverly Hills, California 90210

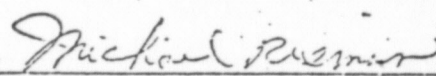
27. This Agreement and all performance hereunder will be governed by the laws of the State of New York which apply to contracts made and to be performed in the State of New York.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

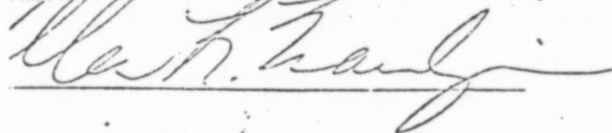
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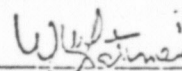
COMPETITIVE ASSOCIATES INC.

By 

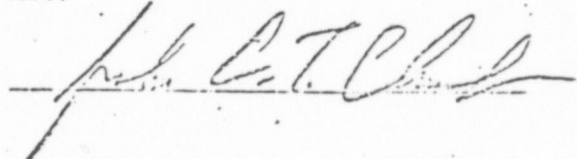
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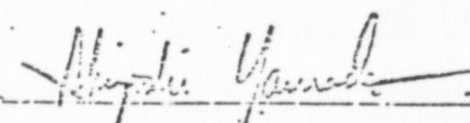


COMPETITIVE CAPITAL CORPORATION

By 

WIT:



By 



DEFENDANT'S EXHIBIT H

COMPETITIVE ASSOCIATES INC.

MEETING OF THE BOARD OF DIRECTORS

January 13, 1971

A meeting of the Board of Directors of Competitive Associates Inc. (the "Fund") was held on January 13, 1971, at the Fund's offices at 9601 Wilshire Boulevard, Beverly Hills, California, at 10:00 a.m. pursuant to written notice. All seven directors, Michael Risman, J. Robert Randolph, J. Perry Smith, Henry Hornes, Jr., Richard Boesel, Jr., Arthur J.C. Underhill and James B. Barron, were present and thus a quorum was present. At the invitation of the directors, Messrs. Alan R. Markizon, Secretary of the Fund; Walter W. Latimer, Treasurer of the Fund; Peter Landau, President of The Seaboard Corporation; Bill D. Steele, Treasurer of The Seaboard Corporation; Philip N. Smith, Jr., Esq. of Lawler, Sterling & Kent, counsel to the Fund Manager; and Ezra Levin of Marshall, Bratter, Greene, Allison & Tucker, counsel to the Fund were also in attendance.

Mr. Risman, Vice President of the Fund, called the meeting to order and presided and Mr. Markizon acted as Secretary and kept the minutes of the meeting.

The minutes of the prior meeting of the Board held on October 9, were distributed to the Board. The motion was then made and seconded and it was unanimously

RESOLVED: That the minutes of the meeting of the Board of Directors of the Fund held on October 9, 1970 be and they hereby are approved.

At the request of the Board of Directors, Mr. Landau then reported to the Board of Directors on the condition of The Seaboard Corporation, the parent of Competitive Capital Corporation, the Fund Manager. Mr. Landau outlined recent history of the company, its previous liquidity problem, its profit problem and the recent actions of the Board of Directors of The Seaboard Corporation which resulted in his election as President and the election of Mr. Solomon, the previous President, as Chairman of the Board of Directors. He informed the Board that the sale of Seaboard Life Insurance Company the most valuable asset of

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## DEFENDANT'S EXHIBIT H

The Seaboard Corporation, was imminent and that the company would realize more than \$4 million in cash from that sale. He also related to the Board that Seaboard was in the process of selling the company which manages the B. C. Morton Real Estate Investment Trust and that sale, if completed, would bring the company approximately \$175,000. He also indicated that Seaboard is negotiating the sale of its holdings in Investment Data Corporation. In all Mr. Landau indicated the company would be left with about \$2.5 million in cash after paying off all of its debts. Members of the Board asked several questions relating to the financial condition of Seaboard and its future. Mr. Landau said that in his opinion, Seaboard was about to overcome its financial problems and that he could assure that there was no current problem as to its solvency. He did indicate that at various times in the immediate past the company has had a severe liquidity problem and still has not turned the corner as to profitability of operation. As to the future, Mr. Landau indicated that the company would become a mutual funds sales and management organization. Although it will no longer own a life insurance company, it will continue to sell life insurance through its retail dealers.

Mr. Landau reported that the management company and the counsel to the Fund, Mr. Ezra Levin, had been receiving certain rumors about the conduct of one of its portfolio managers, unrelated to his activities with the Fund, which however might bear adversely of the Fund. The Board therefore, had invited Mr. Akiyoshi Yamada, President and sole stockholder of Takara Asset Management Corporation, and his counsel, Ira Smith, Esq., to attend the Board Meeting. Messrs. Landau and Levin reported that they had information that the Securities & Exchange Commission was investigating a company of which Mr. Yamada was an officer and Mr. Yamada, personally, concerning the artificial manipulation of thirteen stocks (three of which the Competitive Associates Inc. owns). Other allegations include receiving consideration for recommendation of certain stocks; undisclosed profits for the purchase of said stocks; and fictitious orders. The officers had also come upon a lawsuit which had been filed against Mr. Yamada, which made certain allegations relating to the fraudulent purchase of securities. The Board discussed the fact that they once before had asked the officers to investigate certain rumors concerning Mr. Yamada, and that the Board had done so and been told by Mr. Yamada's counsel that there was no such investigation. Such information had been previously conveyed to the Board by Mr. Markizon, Secretary of the Fund.

Mr. Yamada and Mr. Ira Smith were then invited into the Board Meeting to discuss these matters, although the Board's knowledge that the Commission was conducting an investigation was not made known to them.

DEFENDANT'S EXHIBIT H

Minutes of that conversation are attached. Prior to their approval by the Board, they were shown to Mr. Yamada and Mr. Ira Smith. Where Mr. Yamada's view of what was said differs from the Board's, it has been noted.

The Board then was given copies of the Investment Company Act Release #6295 issued on December 23, 1970, by the SEC. That Release is entitled "Accounting for Investment of Securities by Registered Investment Companies." Mr. Philip Smith discussed with the Board the general guidelines set down by the Release and specifically called its attention to the section entitled, "Securities Valued in Good Faith" on Page 5. He particularly discussed the general factors that the Commission is asking directors to consider in determining as evaluation method for individual issues of securities. The Board then individually considered each security owned by Competitive Associates Inc. which is restricted as to sale. Release #6295 is attached.

A report prepared by Mr. Walter W. Latimer, the Treasurer, which is attached to these minutes, was distributed to the Board of Directors. Mr. Randolph discussed the Fund's holdings of securities of Four Season Nursing Centers of America, Inc. and two affiliated companies, all of which are combined in a bankruptcy proceeding in the United States District Court for the Western District of Oklahoma. Mr. Randolph was not optimistic on realizing value from any of these securities, although there is always the possibility that a re-organization will bring some benefits to the common stock holders or that a lawsuit might successfully be effected on behalf of a class of which the Fund is a member (such a lawsuit has been brought in the United States District Court in Cleveland, Ohio, but at this time the officers had no information as to the prognosis for success). Historically, Four Seasons Nursing Centers of America, Inc. have been valued at 50% of market value. After discussing the point that Mr. Philip Smith had raised in his discussion and upon seeing no new evidence as to why that evaluation should be changed, upon motion duly made and seconded, it was unanimously

RESOLVED: That the Board of Directors value the common stock of Four Seasons Nursing Centers of America, Inc. at 50% of the market price and that such evaluation is fair and reasonable in the opinion of the Board, based on its traditional discount of the issue.



DEFENDANT'S EXHIBIT H

Mr. Randolph then discussed the Fund's holdings of Four Seasons Equity Corporation which is affected by the identical factors which affect the Four Seasons Nursing Centers of America, Inc. Upon motion duly made and seconded, it was unanimously

RESOLVED: That evaluation of 50% of market value is fair and reasonable and that the securities would be valued at that price.

The Board also considered the warrants that the Fund owns for purchase of Four Seasons Franchise Centers, Inc.'s common stock, no later than December 31, 1974. The company is part of the Four Seasons complex, but the directors discussed this difference between evaluating common stock and evaluating warrants. Upon motion duly made and seconded, it was unanimously

RESOLVED: That it was fair and reasonable not to ascribe any value to the warrants of Four Seasons Franchise Centers, Inc. that the Fund holds.

Mr. Korman then raised the issue concerning the 50¢ per quarter service charge which is levied on all shareholders. The charge is a reimbursement for the establishment and servicing of an account which must be maintained whether or not the shares are in certificate form. Because there has been no distribution, either in income or capital gains, the service charge has never been collected from shareholders. The Board discussed various methods of retrieving the sales charge and one method was that until such time as the distribution is made, the 50¢ per quarter service charge will be deducted from the proceeds of all full redemptions of accounts and the sum will be calculated to the inception of each individual account. A motion was made and seconded, and it was unanimously

RESOLVED: That the officers instruct the Transfer Agent to withhold an amount equivalent to 50¢ per each quarter of the existence of a shareholder's account when that account is fully liquidated.

Mr. Philip Smith then supplemented his earlier memo to the directors concerning the 1970 amendments to the Investment Company Act of 1940, by discussing the salient relevant positions with them. Among those that were discussed were the provisions involving management fees, fiduciary duty of the manager, new definitions of interested person, and other relevant provisions.


DEFENDANT'S EXHIBIT H

Mr. Latimer then reviewed the part of his report dealing with brokerage account sharing arrangement as negotiated with the manager and the Fund at the Fund's Board Meeting of October 9, 1970. Mr. Latimer responded to questions about the operation of the formula, the procedures, the expenses and their allocation between the various Funds who are involved in the sharing arrangement and the prospects for even a greater reduced management fee in the future.

There being no further business to come before the Board, upon motion duly made and seconded, it was then unanimously

RESOLVED: To adjourn. °  
Adjourned.  
A true record.

ATTEST:

  
Alan R. Markizon, Secretary

DEFENDANT'S EXHIBIT H

SEGMENT OF MINUTES DEALING WITH TAKARA ASSET MANAGEMENT CORP.

During the meeting of the Board of Directors of Competitive Associates Inc., held January 13, 1971, Mr. Akiyoshi Yamada, President and sole stockholder of Takara Asset Management Corporation, appeared to discuss with the Board certain rumors and allegations concerning himself, another company of which he was an officer and certain former business associates. Accompanying Mr. Yamada was Ira N. Smith, Esq. In addition to the full Board of Directors, the meeting was attended by Peter Landau, President of the Seaboard Corporation; Walter W. Latimer, Treasurer of the Fund; Bill D. Steele, Treasurer of Seaboard; Alan R. Markizon, Secretary of the Fund; Ezra Levin, Esq. partner of Marshall, Bratter, Greene, Allison & Tucker, counsel to the Fund; and Philip N. Smith, Jr., Esq., associate of the firm of Lawler, Sterling & Kent, counsel to the Fund Manager.

The first topic of discussion was the lawsuit in the United States District Court for the Southern District of New York entitled Armstrong Investors. S.A. and Armstrong Capital, S.A. vs. John Peter Galanis, Akiyoshi Yamada and Everest Management Corporation (70 CIV 5315). Mr. Yamada related that the lawsuit had no bearing whatsoever with his relationship with Competitive Associates Inc. Everest Management Corporation is investment manager of the offshore funds of Armstrong Investors and Armstrong Capital. Mr. Yamada then outlined how he came to be associated with Everest Management Corporation. In early 1969, Mr. Yamada left Kuhn-Loeb to form Takara Partners, his investment partnership. During the two month period between leaving Kuhn-Loeb and the time Takara Partners was formed and operating, he operated as an independent consultant for John Galanis, who was then a Vice President of Neuwirth Fund. Galanis had called Yamada, requesting the latter to come to work for the Neuwirth Fund. On the basis of representations by Galanis and Mr. Neuwirth as to a future association with the Fund, he acted as an independent consultant, whose duties consisted of going out personally and researching companies in which Galanis had an interest. He would visit the company and then prepare a report with a recommendation. The relationship ceased when Neuwirth and Yamada could not agree on terms of a formal association. In the summer of 1969, Galanis left Neuwirth. Galanis and his cousin John Zachary, formerly of City Associates, together founded both an offshore fund and a company to manage that fund. Galanis asked Yamada to help manage the money in the fund and while associated with the management company, from time to time he recommended certain securities as possible candidates for the Fund. He and Galanis also shared office space. The Manager



#### DEFENDANT'S EXHIBIT H

vehicle for the fund (Armstrong) was Everest Management Co. of Delaware Corporation. Zachary is the President and a New Jersey resident. Galanis is Executive Vice President, a New York resident and is now in Montreal. Yamada was Vice President and is a New York resident. Yamada was a stockholder in Everest. Mr. Yamada said that he and Galanis jointly made recommendations to Armstrong and generally traded securities ideas.<sup>1</sup> In January 1970, they attempted to formalize the relationship and Galanis came into Takara Partners as a general partner. Mr. Galanis was asked to resign as a general partner of Takara in August, 1970. Yamada resigned from the offshore management company in September, 1970. Yamada asked him to do this both because of personal and business reasons.

While Yamada was away on a trip, Galanis ordered shares in the Hair Extension Centers, Inc. underwriting for Takara Partners. When Yamada returned he saw the confirmations and the prospectus and after reading the prospectus decided that he did not want to own the stock under any circumstances. He did not care for the existing prospectus of the Company and felt that its purchase was not appropriate for the Partnership. He did not like the stock and this, i.e., the receipt of the prospectus, had been the first chance he had to analyze the company. He called the broker (Kevin Securities) involved, sent three certified letters, and had trades cancelled on the grounds that they had been made by an unauthorized person. Mr. Yamada has the cancelled confirmation and offers to submit it to the Board. The offer was accepted. Mr. Galanis had ordered the above securities and, in fact, did invest in Hair Extension Centers, Inc. in the offshore fund. Mr. Smith indicated that Galanis had extensively invested in Hair Extension Centers.

Mr. Smith then went into some of the procedural details concerning the Armstrong lawsuit. He indicated that he did not know why service had not been effected as Mr. Yamada has continued to maintain his residence at 941 Park Avenue, New York City; he has not been avoiding service; and somebody is usually at his home or business address to receive service. Mr. Smith believes that the lawsuit will not survive

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In his letter commenting on the original draft of these minutes, Mr. Yamada states that he "did not jointly with Galanis make securities recommendations, nor did I generally trade securities ideas with Galanis."

## DEFENDANT'S EXHIBIT H

procedurally. He explained that the jurisdiction for the suit is diversity of citizenship and it must be brought where either all the Plaintiffs or all the Defendants live. As the Plaintiffs are a foreign corporation they have no forum identifiable with them, and therefore, the suit must be brought where all the Defendants live. If Zachary, the Chief Executive Officer and a New Jersey resident, were included, that would destroy diversity. Mr. Smith pointed out that there was no specific allegation in the complaint as to Yamada. The allegations are always as to "Defendants" in general or "Galanis." Yamada was named, according to Smith, because he has a deep pocket. In the event that the suit should not die procedurally, the one aspect that concerns Mr. Smith is the problem of Mr. Yamada merely standing by while others acted improperly. However, Yamada was the junior member of the officer group. (Yamada played the same role here vis a vis Galanis that he had played when Galanis was at Neuwirth. While with Everest he looked at less than 15 securities.) When Yamada left Everest, Galanis bought his stock.

Mr. Boesel inquired about the fact that the original presentation made to the Board of Directors in June 1970 indicated that Everest Management managed \$8 million for Armstrong and the lawsuit indicated that only \$4.5 million was involved. Mr. Yamada replied that one person who was a shareholder in Armstrong had a separate segment of money managed which amounted to \$3.5 million and Everest also managed that money.<sup>2</sup>

Mr. Homes asked about the varying responsibilities between Yamada and Galanis. Mr. Yamada replied that Galanis was principally responsible for Armstrong and Yamada ran Takara Partners. The portfolio of Takara was substantially different than that of Armstrong. He never initiated an order to either purchase or sell any securities for Armstrong. However, on occasion when Galanis was out of the office, he would place orders for Armstrong at Galanis' instruction.

The City National Bank of Nassau (subsidiary of the City National Bank in New York) was the director of Armstrong, and Zachary was the sole contact with the Bank and the sole individual domestic director of Armstrong.

Yamada's 1970 performance in Takara Partners is up 8-10%.

The Board then asked some questions relating to the fact that Mr. Yamada is the sole person managing the portion of Competitive Associates Inc. allocated to Takara. He indicated that as he was recently burned during his association with Mr. Galanis and, as to adding

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<sup>2</sup> In his letter, Yamada states: "Galanis and Zachary personally, rather than Everest, managed the separate segment of money of one shareholder of Armstrong."

DEFENDANT'S EXHIBIT H

new people, he is taking it slowly pending the completion of his annual audit. His association with Mr. Galanis began in May 1969 and ended August 30, 1970.

Two of the companies about which allegations in the Armstrong complaint were made were United Asset Group and Nationwide Marketing Associates Inc., both of which Mr. Yamada said he had nothing to do with. In addition, there is an allegation in the complaint concerning a note of Kennington Corporation. Apparently the substance of the transaction was that Kennington Corp. issued a note to Takara Partners which transferred it for cash to Galanis who sold it to Armstrong. Yamada said that the note was put into Takara Partners by Galanis while he was away without his permission or authorization, and when he returned, he had it taken out. At that time, Galanis put up the cash and purchased the note.<sup>3</sup>

Mr. Smith indicated that he believed, but had no personal knowledge that, Armstrong's books would indicate that the note had been issued and sold from Kennington Corp. directly to Armstrong.

Mr. Yamada indicated that Galanis would always rectify any wrongdoing vis a vis Yamada or Takara by making good the transaction with cash. Galanis put up \$200,000 to come into Takara Partners. He is Zachary's cousin. Galanis has been in Montreal for three months.

The Board has recently heard adverse rumors as to three stocks which Mr. Yamada had purchased in the Associates portfolio. First was Computerized Knitwear, a Brooklyn manufacturer of double knit material. Mr. Yamada indicated that there was substantial institutional interest in this security and that it would earn approximately 60¢ this year; 90¢ next year and \$1.25 the following year. The second stock was Synchronex, a company that manufactures and develops 8-millimeter sound-on-film, which he believes will be one of the revelations in the leisure field. He is in touch with management approximately once a week and owns this security in every portfolio that he manages and has managed in recent years.

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<sup>3</sup> Mr. Yamada's version of that discussion is: "The Kennington note was transferred by Takara Partners to Galanis in lieu of cash, i.e., a partial withdrawal of capital or a redemption in kind. Further, the statement in the minutes relating to the initial purchase of the Kennington note by Takara is incorrect. The note was purchased by Takara in January 1970, and was delivered to Galanis in April, 1970 when he stated his desire to withdraw a portion of his capital (\$150,000) from the partnership (then about \$250,000). I was unwilling to allow such a substantial cash withdrawal and he agreed to accept the Kennington note."



DEFENDANT'S EXHIBIT H

As to the question of why he dealt with those three brokers and those three stocks (Synchronex, Computerized Knitwear and Regal Crest) instead of a larger house, he indicated that when looking for size in an over-the-counter stock, one generally goes for the broker who underwrote the stock and which is investment banker for the subject company. This applied in two of the above cases and in the third, Kelly, Andrews and Bradley was a market maker offering the stock in size.

Mr. Yamada said that he made no formal or informal, direct or indirect, recommendations of Hair Extension Centers, Inc. to any one at any time, to either buy or not to buy.

He said he would average down the investments in the three stocks indicated above (Computerized Knitwear, Synchronex and Regal Crest). He owns two of these stocks in his investment partnership. He does not own Computerized Knitwear.

Mr. Yamada indicated that the general partnership in Takara would now be comprised of a partnership in which he would be the general partner and John Burns would be the limited partner.

Synchronex had a 1970-71 high of 29; Competitive Associates Inc. cost of 7 and is now 5. Regal Crest had a 1970-71 high of 15, Competitive Associates Inc. cost of 4, now 3-1/4. Computerized Knitwear had a 1970-71 high in the mid 20's, Competitive Associates Inc. cost \$7.85 and is now \$3.25. Mr. Yamada represented that there are no other pending or threatened legal actions against him.

Mr. Yamada said that he had taken no private placements by any of the broker/dealers involved and there had been no related actions by him in relation to those broker/dealers. He also indicated that he never personally benefitted from any investment advice rendered or investments purchased for clients other than his normal fees for the rendering of such advice.

Mr. Levin asked about the timing of the trades which he cancelled concerning Hair Extension. Mr. Yamada answered that these took place before Galanis and he split, but after Takara had been formed. Takara had gotten the confirmation from the broker, Kevin Securities, a New York City NASD-only dealer. Yamada had been out of town. The first time he saw the company was when the prospectus and confirmation came together. He reprimanded Galanis when the latter returned. Armstrong purchased Hair at a much later time.

Yamada said that he had had no other conversations with anybody about Hair as an investment vehicle, either positive or negative, at any time.

DEFENDANT'S EXHIBIT H

Mr. Randolph asked about Provident Securities, the firm through which Mr. Yamada purchased Computerized Knitwear and Synchronex. Mr. Constantiniou of Provident Securities, which was a member of the underwriting group in the public offering of Synchronex, is an acquaintance of a director of Synchronex.

Mr. Smith indicated that Yamada had invested in Synchronex since it went public through Herbert Young in 1969. Mr. Smith knows that the Securities & Exchange Commission has been asking questions about Synchronex. Other clients of Yamada, including Takara Partners, own Synchronex and all at higher prices.

The third security which the Board asked about was Regal Crest. Mr. Yamada responded that Regal Crest is a company based in Bethlehem, Pennsylvania, two of whose subsidiaries are Regal Crest Recreation and Regal Crest Land Developing Co. The first company develops recreational homesites in Western Pennsylvania; and the second is in the business of selling land outright on an installment basis.

Both Mr. Smith and Mr. Yamada said that they were not aware of any Commission investigation of Yamada or any securities he has purchased, although Mr. Smith said that he heard they were looking into Synchronex.

Responding to a question by Mr. Randolph, Mr. Yamada indicated that he knew the securities firm of Philip Budin because the latter was involved in the Sovereign American Arts underwriting, a company which he has purchased for Competitive Associates Inc. Sovereign American Arts is in the business of buying works of art and one of the appeals of this company is that the accounting rules surrounding art purchases enable one to carry the art at cost and then take the sale price in as capital gains. Mr. Yamada represents that he has seen the works of art and the books which show the purchase prices and is convinced that the company stands to make a great deal of money from the eventual sale of these works which it owns.

Mr. Yamada had purchased Regal Crest through the firm of Kelly Andrews and Bradley and he indicated that they were involved in the financing of Aerial Applications, Inc. and Electric Gas Dynamics.

He indicated that he has no business relationships with Provident, Budin or Kelly Andrews other than purchasing securities from them.

Mr. Yamada indicated that approximately 20% of the securities he purchases, are over-the-counter purchases.

DEFENDANT'S EXHIBIT H

Yamada said that Armstrong purchased Synchronex before Competitive Associates Inc. did, and then added that all relevant securities transactions in stocks common to other portfolios he manages and Competitive Associates Inc. took place in those other portfolios prior to the time that he began to manage Competitive Associates Inc.

Concerning Computerized Knitwear, he has spoken to other managers to check their impressions but not pushing the stock. In Regal Crest he did the same general checking but no pushing.

Yamada related that he has personally purchased new issues from Provident Securities. However, he has had no allocation of new issues which was disproportionate to his investment history.

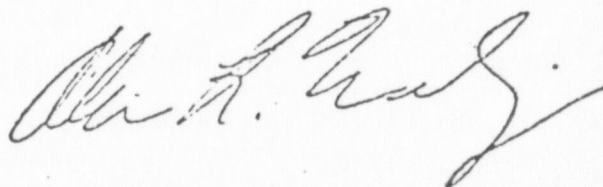
Yamada discussed how he operates when he wants to buy the same security for two entities, one of which is Competitive Associates Inc. He indicated that in such a case, he always purchases for the Fund first. Asked if he ever received any compensation for buying a particular security he replied that absolutely without question he had never received compensation for purchasing any security.

Mr. Yamada indicated that he would be glad to furnish the Fund with a list of new issues which he participated in, directly or indirectly; and would request Mr. Perry Constantinou, President of Provident Securities and a director of Synchronex, to cooperate with the Fund in its inquiry, and to furnish all data requested by the Board.

Mr. Yamada and Mr. Smith then left the meeting.

Mr. Yamada has made the following request: "Further, to the extent that the remarks attributed to me were prefaced by my stating that it was my opinion, recollection or belief as opposed to the statement in the minutes as to my personal knowledge, I request that you correct the minutes to reflect these statements. As you can understand, I have in no way attempted to pass upon the accuracy of any portions of the minutes which purport to reflect statements, remarks or questions attributed to persons other than myself."

A stenographer was not present at the meeting and these minutes have been compiled from the notes of counsel in attendance. The Board takes note of his request to distinguish between references and opinion and representations of fact, but does not have the facility for doing so.





DEFENDANT'S EXHIBIT I

February 8, 1971

Mr. Irwin M. Borowski  
Branch Chief  
Securities & Exchange Commission  
Division of Trading & Markets  
Washington, D. C.

Dear Mr. Borowski:

On previous occasions, both the counsel to our Fund, Ezra Levin, Esq., and I have indicated our desire to cooperate with you, and in this light have furnished certain information concerning Takara Asset Management Corporation. Enclosed is a xerox copy of a list of securities purchased at the order of Takara Asset Management Corporation and the corresponding list of the brokers through whom such securities were purchased. The relevance to you of the names of the broker/dealers may not be as great as it might be, because Competitive Capital Corporation, the Fund Manager, makes the decision as to which brokers are used on any given transaction. This is not to say, that the fund traders work in a vacuum, and that Managers' suggestions as to who might bid or offer securities may not be followed up. To that extent, and it is more prevalent on smaller over-the-counter issues, Portfolio Managers' relationships or ideas might have a greater influence on which brokers are used than at other times.

I would like to renew Mr. Levin's request for any information which the staff feels has a bearing on the propriety or advisability of the continued service by Takara as a Portfolio Manager of Competitive Associates Inc. As I am sure you can understand, we are vitally interested in protecting our shareholders and, on the other hand, do not want to either take any action that is premature or unwarranted.

Sincerely yours,

Alan R. Markinson  
Secretary  
ARM/yv

encl.

cc: Mr. Levin, Esq.

DEFENDANT'S EXHIBIT K

March 3, 1971

TO: PORTFOLIO MANAGERS  
Competitive Capital Fund and Competitive Associates Inc.

Mr. James E. Ledbetter  
Bernstein-Macaulay, Inc.

Mr. Nikos A. Pharasles  
Cantor Management Associates, Inc.

Mr. Joseph Pikul  
Argent Management Corporation

Mr. Ralph Shaw  
Shaw Management Company

Mr. Akiyoshi Yamada  
Takara Partners

FROM: Alan R. Markizon *ARM*

RE: COMPLIANCE AND RELATED PROBLEMS

This memorandum is being done in connection with the Meeting of Portfolio Managers to be held on March 17, 1971. These are some matters that I will raise speaking to you at the Managers' meeting. In addition, I would like to visit your offices during this trip to New York and I will speak about some of the issues to you individually.

I.

Last July I wrote a letter to all of you, a copy of which is attached, which attempted to articulate both specific restrictions

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March 3, 1971

as to investment policy and general guidelines for your activity. These were in relation both to our clients and to those issues solely relating to Competitive. They also concerned your record-keeping activities. Exemptions have not been asked from those provisions and I must assure myself that compliance has been forthcoming. Some of the issues that I raised at that time:

- 1) SECURITIES OF AFFILIATES - I was concerned that we might unwittingly purchase the securities of an affiliate. I asked for the names of any companies which might be deemed affiliates of yours and it was indicated that no officers of the managers were affiliated with any issue or corporation. I have attached a questionnaire on this subject, which we ask directors to complete. In addition, if a question arises, I would appreciate a telephone call.
- 2) CONFLICTING TRANSACTIONS-A - The second question on the attached letter deals with transactions where the fund and a private client are on the same side. At that time, I indicated that I was putting you on notice as to scalping problems. Although I have no knowledge that such a problem might still prevail, I will be interested in knowing how all of you have resolved your conflicts with private clients up to this time. I might say, that not one problem has been brought to my attention for resolution, and it makes me suspect that you are resolving them without consulting us.
- 3) CONFLICTING TRANSACTIONS-B - In the July letter, I referred to the possibility that Competitive and one of your private clients might be on the opposite sides of transactions within a week of each other, and that we would expect a written explanation within 24 hours. I have not received one written explanation of such a transaction as of this date and need to explore with you your program in this area.
- 4) EMPLOYEES - Attached is the Agreement (Seaboard Employees Involved in Mutual Funds Trading) which we have all Seaboard employees enter into who might have access to trading information. Any Portfolio Managers who have not asked their employees to execute a similar type of Agreement are strongly urged to do so.
- 5) RECORDS - I will be interested in visiting your offices. Competitive Capital Corporation is responsible in some degree for the maintenance of the records required by the Investment Company Act of 1940. Included in the types of records which I would like to examine are those related to the placement of orders for both Competitive and any other clients you or your affiliates might have. (Of course, all records that I examine will remain confidential.) They include blotters, execution records, confirmations, records of quotes, etc.



DEFENDANT'S EXHIBIT K

Portfolio Managers

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March 3, 1971

thin over-the-counter stock, most likely the House that has been doing the research on that stock and who might be that company's investment banker, probably is best able to provide the execution. In most circumstances, if you give us that information, we will allow them to make a bid or offer. However, they should have no previous knowledge of your intentions and you should not expect us to necessarily give that firm business. The decision must rest with our trading desk.

IV.

A problem has recently arisen concerning possible payment of incentive fees to Competitive Capital Fund Portfolio Managers for 1971. The contract indicates that compensation shall be paid monthly. Because of the peculiarities of the incentive fee structure, in a market that was nearly balanced for the year, poor performance in the last month(s) of a year, could result in a manager moving from incentive compensation to no incentive compensation. In such a case, the manager could owe the Fund reimbursement of many times the base fee payments due. I would like to discuss an equitable resolution of this matter.

V.

You might also help us to help our shareholders. As you all know, we are involved in a brokerage sharing arrangement with the Fund and both the Fund and Seaboard benefit when Fund-related brokerage is placed with The Seaboard Funds Distributors, Inc. The various research houses with whom you direct us to place business all have, to varying degrees, excess brokerage to place with a firm who does executions on a national securities exchange. We are attempting to expand the operations of that broker and to the extent that your research firms have excess brokerage to be placed with an Exchange member, we would like you to help us have them place that brokerage with Distributors.

DEFENDANT'S EXHIBIT K

Portfolio Managers

-4-

March 3, 1971

thin over-the-counter stock, most likely the House that has been doing the research on that stock and who might be that company's investment banker, probably is best able to provide the execution. In most circumstances, if you give us that information, we will allow them to make a bid or offer. However, they should have no previous knowledge of your intentions and you should not expect us to necessarily give that firm business... The decision must rest with our trading desk.

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V.

You might also help us to help our shareholders. As you all know, we are involved in a brokerage sharing arrangement with the Fund and both the Fund and Seaboard benefit when Fund-related brokerage is placed with The Seaboard Funds Distributors, Inc. The various research houses with whom you direct us to place business all have, to varying degrees, excess brokerage to place with a firm who does executions on a national securities exchange. We are attempting to expand the operations of that broker and to the extent that your research firms have excess brokerage to be placed with an Exchange member, we would like you to help us have them place that brokerage with Distributors.

DEFENDANT'S EXHIBIT K

DATE: March 5, 1971

TO: All Directors of the Seaboard Funds

FROM: Alan R. Markizon

At the end of October, I originally asked all of you to fill out the attached Form A concerning the affiliations with companies which our funds might possibly purchase but be barred from doing so because one of the directors is affiliated with that company. The paragraph directly below appeared in that letter:

"The Investment Company Act of 1940 prohibits the purchase of securities by mutual funds where the officers and directors have certain affiliations with the portfolio companies. In order to assure compliance with that Act, please indicate on the attached form any publicly held companies of which you are an officer, director, or own more than 1/2 of 1% of the outstanding securities. If you own more than 1/2 of 1% of the outstanding securities of any company, please indicate the number of shares owned and the percentage of the outstanding stock of that company. In addition, if you control any company which does not fall into the above categories, please indicate that as well."

Please fill out the form just as you did the last time, updating it if necessary.

The 1970 Amendments to the Investment Company Act of 1940 made it unlawful for an affiliated person of a Registered Investment Company (for example, a director) to engage in a course of conduct which might be considered fraudulent, deceptive, or manipulative in connection with the purchase or sale of securities held by the Registered Investment Company. The SEC is authorized to establish codes of practice concerning such conduct and the implication is clear that investment companies should establish such codes of conduct and programs of implementation without waiting for the Commission to force them to do so. Therefore, we are taking the initiative through the procedures indicated below.



Directors

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March 5, 1971

The attached memorandum (Attachment B) was circulated to selected Seaboard employees several months ago. These employees were required to sign the memorandum and return it to us. Directors of a mutual fund are privy to confidential information concerning the purchase and sale of portfolio securities of that fund and are in a posture similar to that of employees of Seaboard who are privy to the same confidential information. It is incumbent upon both the managers of the respective funds, the funds themselves and the directors of the funds to protect themselves from any charge that they are benefitting from knowledge of what securities the funds are buying and selling at the expense of the funds. As directors are specifically given information that is not normally available to employees, we feel even more strongly about this matter where directors are concerned. At Board Meetings and between Meetings, information is prepared and distributed to directors which gives up-to-date information as to the Funds' purchases and sales, management information concerning portfolio companies, strategy behind such purchases and sales, and other pertinent information which gives directors of the fund unique information which they could use, if they were so inclined, to their personal advantage to the detriment of the fund.

We cannot over-emphasize our concern on this matter. Your compliance with our rule and request below can only be for the protection of both you and the fund. The misuse of such information as is available to you will bring dire consequences for all concerned. Therefore, as a protection to you, the Fund and the manager, we are formally informing you of the rule below which will prevent you from using any information gained during the course of your tenure as a director to purchase or sell securities, to advise anyone else to purchase or sell securities or to in any way benefit from the transmission or possession of such information.

In implementing this general rule you must agree to follow this more specific rule:

At any time that you know or have reason to believe that any of our mutual funds are purchasing or selling or may purchase or sell specific securities and you desire to purchase or sell the same securities, either directly or indirectly, you must request permission from Jerome R. Randolph. You must request this permission prior to the transaction at any time that

DEFENDANT'S EXHIBIT K

Directors

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March 5, 1971

you know or suspect any of the Funds will be active in a stock or have been active during the previous month. You must record for your own records each time that permission is requested, the date it's requested and whether or not it's granted. This record is your only protection against later inquiry.

In addition, periodically, but with no less frequency than each Quarter, you will be given a list of all securities which the Fund owns and which it did own during any time in that period. You will be asked to list dates and quantities of all purchases and sales in any accounts which you either control, supervise, or from which you in any way benefit.

We hope that you will not be offended by the sharp tone of this memorandum, but calling the shots as we see them is a protection both for you and for the funds. A program such as this will only serve its proper protective function if directors cooperate with the spirit as well as the letter of the rule. If you have any doubts as to its application, please contact me. We greatly appreciate your cooperation in this matter.

Your signature below signifies that you fully understand the above and that you agree to fulfill and obey all the terms and conditions of these guidelines.

ACCEPTED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Please sign one copy and return it to me, keeping the second copy herewith enclosed for your files.

-329a-

ARM:yv  
encls. 4

DEFENDANT'S EXHIBIT K

NAME: \_\_\_\_\_

I. <u>Company</u>	<u>Office or Directorship</u>
_____	_____
_____	_____
_____	_____
_____	_____

II. <u>Company</u>	<u>Stock Owned, If More Than 1/2 of 1%</u>	<u>No. of Shares Owned &amp; Class</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

III. Name of any company controlled  
which doesn't fit into Categories I or II:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date Signed: \_\_\_\_\_

Signature: \_\_\_\_\_



## DEFENDANT'S EXHIBIT K

TO: Seaboard Employees Involved in Mutual Funds Trading

Fund Accounting  
Legal  
Chancellor Management Corporation  
Kevin Cottrell  
Patrick Newsom  
Roger Stephens  
Joni Elliott

FROM: Alan R. Markizon

The Federal Securities Law places great burdens and responsibilities on those people who invest public money as we at Seaboard do. One of those responsibilities is that we will in no way benefit from information secured through our employment at the expense of the clients for whom we deal.

Therefore, as a condition of your continued employment, you must agree in writing not to use any information gained during the course of your employment to purchase or sell securities, to advise anyone else to purchase or sell securities, or to in any way benefit from the transmission or possession of such information.

In implementing this general rule you agree to follow more specific rules:

- 1) At any time that you know or suspect that any of our mutual funds or the private accounts of Chancellor Management are purchasing or selling or may purchase or sell specific securities and you desire to purchase or sell the same securities, you must request permission from Jerome R. Randolph at Chancellor Management. You must request this permission prior to the transaction at any time that you know or suspect any of the Funds will be active in a stock or have been active during the previous week. You must record for your own records in writing each time that permission is requested, the date it's requested, and whether or not it's granted, and to whom you spoke. This record is your only protection against later inquiry.
- 2) You should list here all brokerage accounts in which you have any interest whatsoever, or which you control,

DEFENDANT'S EXHIBIT K

including the account number, the brokerage firm, and the branch.

3) At any time which you open a new brokerage account you must notify the Legal Department of such activity.

4) Your signature below shall give permission to the Legal Department to request copies of your account(s) from such brokers.

These guidelines are an effort to protect both the corporations involved and you as individuals. All information supplied or received will be held in confidence by the Legal and Personnel Departments. A program like this only serves its protective function if employees cooperate with the spirit as well as the letter of the rules. If you have any doubts as to its application, please contact Alan Markizon. Your cooperation is greatly appreciated; please note that violations of any of the above will be grounds for termination.

Your signature below signifies that you fully understand the above, and that as a condition of your continued employment, you agree to fulfill and obey all the terms and conditions of these guidelines.

ACCEPTED: \_\_\_\_\_  
(Employee Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Department)

(Please sign one copy and return it to the Personnel Department, keeping the second copy for your files.)

00 5/14/71  
DATE: March 30, 1971

MEMORANDUM

TO: J. Robert Randolph

FROM: Alan R. Markizon *ARM*

RE: Visit to the Offices of Takara Asset Management Corp.  
on March 19, 1971

CC: Peter Landau  
Bill D. Steele  
Michael Risman  
Meyer Eisenberg  
Philip N. Smith, Jr.  
Walter W. Latimer

On March 19, 1971, I had an appointment to visit Takara's offices and when I called to indicate that I would be several hours late, it was reported to me by Mr. Yamada's assistant that he had been in briefly earlier that morning and that he would not be in for the remainder of the day. I informed her, in a subsequent phone call, that I would not inspect the office without his presence.



DEFENDANT'S EXHIBIT M

COMPETITIVE ASSOCIATES INC.

MEETING OF THE BOARD OF DIRECTORS

May 12-13-, 1971

A meeting of the Board of Directors of Competitive Associates Inc. (the "Fund") was held on May 12, 1971, at the offices of the Fund's counsel, Lawler, Sterling & Kent, 500 Fifth Avenue, New York, New York, at 2:00 p.m., pursuant to written notice. In attendance were six Directors, J. Robert Randolph, Michael Risman, J. Perry Smith, Henry Homes, Jr., Richard E. Soesel, Jr., and Arthur J.C. Underhill. James B. Barron was absent. Thus, a quorum was present. At the invitation of the Directors, Mr. Alan R. Markizon, Secretary of both the Fund and the Fund Manager, was also present. Also at the invitation of the Directors, representatives of the two Portfolio Managers of the Fund were present: Akiyoshi Yamada, Takara Asset Management Corp. and Joseph Shaw of Shaw Management Corp.

Mr. Michael Risman, Vice President of the Fund, called the meeting to order and presided and Mr. Markizon acted as Secretary and took minutes of the meeting.

Mr. Risman called on Mr. Randolph to explain the purpose of this first segment of the meeting. Mr. Randolph said that it was the Directors' view that they should meet with the Portfolio Managers in order to review in person the general conduct of the Portfolio Managers in relation to each of their segments of Competitive Associates Inc. The Directors thought that it was in the interest of the Fund that the Directors review such matters as investment concepts; portfolio turnover; number of issues in the portfolio; investment strategy; investment objectives; and structures of the management organizations themselves. Mr. Randolph then proceeded to call on each of the Portfolio Managers to have them review and discuss the above matters with the Directors. In addition to touching on all of the above matters, the Managers also discussed the recent action taken by the German government and the Mark as it relates to the value of the Dollar. All of the Directors participated in questioning the Managers as to their investment strategy, their investment procedures, turnover, objectives, etc.

Upon motion duly made and seconded and unanimously carried, at 4:45 p.m., the meeting was

VOTED: To adjourn until 10:00 a.m., Thursday  
May 13, 1971.

*Delt's Ex 17 4/6/73 1 of 13*

## DEFENDANT'S EXHIBIT M

The meeting was called to order on Thursday, May 13, 1971, at 10:30 a.m., by Michael Risman. In addition to those attending the previous session of this Board of Directors Meeting, the following were in attendance pursuant to invitation by the Board: Peter Landau, President of The Seaboard Corporation; Meyer Eisenberg, Esq. and Philip N. Smith, Jr., Esq., of Lawler, Sterling & Kent, counsel to the Fund Manager; and Ezra Levin, Esq., of Marshall, Bratter, Greene, Allison and Tucker, counsel to the Fund. In addition, James B. Barron, Director, was in attendance. Thus, a quorum was present. The three representatives of the Portfolio Managers were not in attendance at this session.

The minutes of the prior Meeting of the Board held on January 13, 1971, were distributed and read by the Board and the motion was then made, seconded and unanimously

RESOLVED: That the Minutes of the Meeting of the Board of Directors of the Fund held on January 13, 1971 be and they hereby are approved.

The following materials were also distributed to the Board, and are attached to these Minutes: An article by Robert H. Mundheim, "Some Thoughts on the Duties and Responsibilities of Unaffiliated Directors in Mutual Funds," published in the University of Pennsylvania Law Review, Volume 115, page 1058, 1967; Mr. Walter W. Latimer's Treasurer's Report, copies of memoranda prepared by Alan R. Markizon, Secretary of the Fund, to J. Robert Randolph, President of the Fund, concerning inspection by Mr. Markizon of the Offices of Shaw Management Corp. and Takara Asset Management Corp.; material related to a borrowing by the Fund from The Bank of California; and additional material described below, relating to Takara Asset Management Corp.

Mr. Landau then reported on the financial conditions of The Seaboard Corporation, the parent company of Competitive Capital Corporation, the Fund Manager, and The Seaboard Funds Distributors, Inc., the Fund's Underwriter. Mr. Landau reported that all of the impending sales of Seaboard assets that had been discussed at the previous Board of Directors Meeting had now been consummated and that the result of the sales was that Seaboard's financial posture had improved substantially. The proceeds of the sale of MFB, Inc., Investment Data Corporation (40%), and Seaboard Life Insurance Company of America, Inc., by The Seaboard Corporation had been used to repay the Company's debts and meet other obligations of the Company. In addition, The Seaboard Corporation was left with substantial current assets that when liquified would give the Company the working capital

## DEFENDANT'S EXHIBIT M

needed to make significant advances. Mr. Landau reported that part of the proceeds had been used to pay the Funds' expense over-run that had been guaranteed by the Management Company. He reported that part of the over-run would be repaid in the normal course of business. Mr. Landau then left the Meeting.

Mr. Risman then called attention to the Treasurer's Report which had previously been distributed and the Directors reviewed the contents. Mr. Risman called attention to Exhibit 3 of the Report, entitled "Commission and Related Expenses of Seaboard Funds Distributors, Inc., for three months ended March 31, 1971." Mr. Underhill requested Mr. Markizon to review the numbers on that Exhibit and to explain how they were obtained. Mr. Markizon explained that "the brokerage commissions related to Competitive Associates Inc." were the revenues received by The Seaboard Funds Distributors, Inc. which were related to Portfolio transactions of Competitive Associates Inc. The next entry was the total expenses of The Seaboard Funds Distributors, Inc., related to the total mutual fund brokerage operation. The Statement then allocated a portion of expenses to Competitive Associates Inc. based on its proportion of the revenues. A provision was made for income taxes after which net income was arrived and the balance indicated is the amount to be deducted from Competitive Capital Corporation's fee in accordance with the sharing arrangement negotiated last October 9, 1970. Upon motion duly made and seconded and carried, it was unanimously

**RESOLVED:** That the Treasurer's Report, submitted by Walter W. Latimer, Treasurer of the Fund, not including ratification of the purchases and sales of Portfolio securities listed therein, be and hereby is approved.

Mr. Risman then called on Mr. Eisenberg, counsel to the Fund Manager, to give a current report on the legal aspects of the allocation of the Fund's brokerage and the general industry practices in reference to mutual fund brokerage and negotiated rates in national securities exchanges. In addition, Mr. Risman noted it would be necessary for the Fund to negotiate a rate with The Seaboard Funds Distributors, Inc. ("Distributors") for transactions having a value of more than \$500,000. Mr. Eisenberg reviewed the process of negotiations between Management and the Fund at the October 9, 1970 Board Meeting. He reminded the Board that at that Meeting they had negotiated with Management a procedure by which the Fund should receive a reduction of brokerage commissions for transactions executed on behalf of the Fund on national securities exchanges. As part of that process, the Fund places portfolio transactions with The Seaboard Funds Distributors, Inc., a member of the Pacific Coast Stock Exchange, an affiliate of the Manager and with other brokers who place business with



## DEFENDANT'S EXHIBIT M

Distributors on the Pacific Coast Stock Exchange. The Fund obtains a reduction in its management fee payable to Competitive Capital Corporation in amounts equivalent to 50% of Distributors' after tax profit on the brokerage business related to the Fund. Mr. Eisenberg related that at that time the Board considered various alternatives to the above proposal which they finally adopted. In addition, in both the written material and discussion, they discussed at that time other uses of brokerage and had taken into consideration the fact that the advisor placed some of the Funds' brokerage with those brokers which provided it with research, statistical and related services. Mr. Eisenberg reminded the Directors that at that time they took into consideration the fact that in a substantial number of instances, brokers who provide research and other related services do not necessarily do business with Distributors on the Pacific Coast Stock Exchange, and therefore, by such placement of brokerage dollars, the Fund may have been foregoing certain recapture opportunities. Mr. Eisenberg reviewed the fact that it is a generally accepted position that the Investment Company Act permits a broker/dealer affiliated with a mutual fund who directly executes business for the Fund to keep 100% of the commissions for itself. Mr. Eisenberg also pointed out that the generally accepted view is that an affiliated broker/dealer who receives commission dollars which he does not work for in connection with an affiliated mutual fund trade must return all of those dollars to the Fund. Further, he pointed out that for those dollars which the Fund works for but receives indirectly (i.e., floor brokerage as opposed to four-way tickets on the Pacific Coast Stock Exchange) there is no general view as to the propriety under the Investment Company Act of 1940 of the affiliated broker seeking those dollars. Mr. Eisenberg went on to review for the Board the fact that they considered all of the above when reaching a decision in October to negotiate a 50-50 split, net of income taxes of the entire mix of business, with the Fund Manager and Underwriter. He also related that he believed that an affiliated broker/dealer and Fund could negotiate a sharing arrangement on the entire mix of business.

Mr. Eisenberg then reviewed the development in the area since the last Board Meeting in January. He pointed out that on April 5, 1971, the national securities exchanges abolished fixed commission rates for that part of a transaction in excess of \$500,000; that therefore, the Fund was now free to negotiate the commissions on certain transactions, rather than be bound by the fixed commissions that had been the rule before; that on the other hand, if commission, in fact, were reduced, Distributors' profits would be reduced and the split with the Fund would be reduced. Since April 5, 1971, on trades of value of more than \$500,000 with any of the Seaboard-affiliated Funds, Distributors has not charged a commission on that portion of the trade over \$500,000. Both the Underwriter and Management, consistent with a provision of the Investment Company Act of 1940 providing for customary brokerage commission on trades executed

DEFENDANT'S EXHIBIT M

on national securities exchanges through affiliated brokers, have asked the Board of Directors to negotiate with them a fee rate for those transactions of a value of more than \$500,000. Mr. Eisenberg then reviewed the various industry practices pointing out those of Oppenheimer & Co., which does not split related brokerage profits with the Fund and which charges the Fund whatever the party on the other side of the transaction is being charged; Merrill Lynch, which does not have an affiliated mutual fund, charges customers 3/10ths of 1% of the value of transactions over \$500,000; Saloman Brothers & Hutzler, a block position House, which does not have an affiliated mutual fund, apparently negotiates on each trade and is a little bit higher than most; and Dreyfus Fund which is paying its affiliated broker 3/10ths of 1%. He then indicated that he believed that 3/10ths of 1% of a value of over \$500,000 was consistent with what others were charging. He also indicated that he thought the Directors could take all the factors mentioned both earlier that day and in his written presentation in October, to determine a fair rate of 1/4 of 1% and that management would accept such a rate. Revenue approved on this part of the mix would still be included in the sharing arrangement. He also called attention to the Treasurer's Report of the January and May meetings to reflect the types of profits accruing to the Fund. He also indicated that he felt it would be proper for the Directors to reaffirm, or renegotiate, the sharing arrangement consistent with the experience thus far. Upon motion duly made by Mr. Barron and duly seconded by Mr. J. Perry Smith, it was unanimously (with the exception of Messrs. Risman and Randolph, who abstained)

RESOLVED: That on trades executed by The Seaboard Funds Distributors, Inc. on the Pacific Coast Stock Exchange for the Fund, of a value of more than \$500,000, the rate to be paid by the Fund for that portion over \$500,000 (or if that level is reduced over any other such reduced level) would be 1/4 of 1% with such fee proceeds being included in the revenues to be calculated to reduce the management fee and that such authorization shall automatically expire at the next Board Meeting; and be it

FURTHER RESOLVED: That after giving due consideration to all the factors surrounding the Fund's allocation of brokerage, the sharing arrangement adopted on October 9, 1970, plus the additional resolution made and adopted above, be reaffirmed.

Mr. Risman then called upon Mr. Markizon to speak about expense limitations. Mr. Markizon pointed out that various states have, as a requirement for shares to be sold in their state, placed a ceiling on expenses of the Fund. Expenses over that ceiling necessitate either a cessation of selling that state or reimbursement by the Manager to the Fund of the additional expenses. Traditionally, such limitations



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are expressed as a percentage of average net assets. Mr. Markizon pointed out that he felt such limitations were both unfair and counter-productive. He believed that the Fund Manager's compensation should be negotiated with all factors being considered and that if the Directors felt the Manager was doing an incompetent job and not controlling expenses, they were free to reduce this compensation. In addition, such limitation theoretically, at a minimum, gave management an economic disincentive to risk expense dollars that might benefit the Fund. On the other hand, expense limitations are the laws of several of the states in which we sell, but are now in the state of flux. He then reported that for the year ending March 31, 1971, the Manager would reimburse Competitive Associates Inc. approximately \$60,000 for over-run expenses. He then presented Management recommendations which were that the Fund adopt revisions of its Investment Advisory contract, that the expense limitation shall be the lowest of any State in which the Fund is sold. If adopted at this time, pending further revision of the incentive compensation of the Fund Manager, such proposal would not reduce the expense reimbursement. However, under the present state law it could be expected to reduce the expense over-run reimbursement by  $\frac{1}{2}$  of 1% of the Fund's average net assets, if such assets do not exceed \$30,000,000. At the present asset level of \$15,000,000 such saving would be \$75,000. Mr. Risman pointed out that the \$60,000 figure above was not representative as the current management contracts, provided minimum base fees to the Fund Manager for the first time have only been in effect since October 2, 1970. If they have been in effect for the entire year, the over-run would have been significantly higher. At the current asset level, the over-run would have amounted to more than \$130,000. Therefore, if shareholders adopt this provision, after incentive fee is changed, at the current asset level, the shareholders will probably pay additional expenses of \$75,000 and the management company will save a like amount in the first full year that it is in effect. Upon motion duly made and seconded and unanimously carried (except for Messrs. Risman and Randolph, who abstained) it was

RESOLVED: That the Board recommend to shareholders that the Fund Manager's Contract with Competitive Capital Corporation provide for an expense limitation that would be the lowest of any State in which the Fund is sold.

Mr. Risman then called on Mr. Markizon to report on his familiarization with the offices, in operation, of the two Portfolio Managers of the Fund. Mr. Markizon reported that material distributed to the Board at the beginning of the meeting was his written report on inspections of both of the Portfolio Managers' offices. Mr. Markizon reported that he did not do an inspection as that term is usually meant when used by the staff of the Securities & Exchange Commission, but has visited both of the offices of the Portfolio Managers in order to gain familiarity with their operation.



DEFENDANT'S EXHIBIT M

He discussed their compliance procedures with them, checked to see they kept adequate records and research files and reviewed their conflict policies. Some time in the future, he reported that he hopes to make a more comprehensive inspection. He did report that at this point he found both the Managers' operations satisfactory.

Mr. Risman called on Mr. Markizon to report on the modification of the contract with the Fund's Transfer Agent, Investment Data Corporation. Mr. Markizon then reported that in consideration for the large volume of business and continued business, the Investment Data Corporation has offered to amend its Investment Advisory Contract with Competitive Associates Inc. to include insurance coverage at no cost. The revisions directed to the new Contract are necessary and upon motion duly made and seconded, it was unanimously

RESOLVED: That officers of the Fund be and hereby are authorized to execute a new Transfer Agency Contract with the Investment Data Corporation which will incorporate the existing contract and include additional provisions giving Competitive Associates Inc. the benefit of certain insurance policies that the Investment Data Corporation has procured from Lloyds of London.

Mr. Risman then discussed Proxy authorizations. Three principal items are going to be involved in this year's Proxy -- Revision of the Management Contract to take into consideration a revised expense limitation as described above and to revise the incentive fee to comply with the new provisions of the Investment Advisers Act; the election of Directors; and the appointment of auditors. Mr. Risman indicated that the management and the Board would negotiate the new incentive fee at the next Meeting. Mr. Risman discussed the job that Haskins & Sells has done as auditors for 1970-1971 and indicated that the job done and commensurate billing was satisfactory and recommended that the Board recommend to shareholders that Haskins & Sells be returned as the company's auditors for another year. Upon motion duly made and seconded, it was unanimously

RESOLVED: That the Board of Directors recommend to shareholders that Haskins & Sells be retained as the Fund's auditors for the year ending March 31, 1972.

Upon motion duly made and seconded, it was unanimously

RESOLVED: That the Board of Directors give the Officers of the Fund the authority to draft preliminary Proxy material and submit it to the Securities & Exchange Commission, but such material not be mailed until further review by the Board of Directors.

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Mr. Risman brought up the problem of the Corporation and its President, Akiyoshi Yamada. Mr. Risman reviewed some of the discussion at the last Meeting concerning the rumor and information that had come to the attention of the Officers and Directors of the Fund and the fact that Mr. Yamada had spoken to the Board at the last Meeting. Mr. Markizon had distributed a memorandum to the Board which included the Minutes of that discussion as he had originally drawn them and as they were submitted to Yamada for comments. Mr. Markizon submitted to the Board Mr. Yamada's comments and has reflected those in a proposed set of Minutes. In addition, a letter drafted by Lawler, Sterling & Kent to Mr. Yamada was distributed to the Board as well as a memorandum from Mr. Markizon to Mr. Randolph reflecting the fact that Mr. Yamada had not kept his appointment with Mr. Markizon when the latter was to inspect Takara's offices in March.

Mr. Risman called on Mr. Markizon to report on his activities on this matter. Mr. Markizon reported that certain records of the Fund had been subpoenaed in response to a formal order of investigation by the Securities & Exchange Commission into the activities of Mr. Yamada, his private partnership and offshore funds. Named in the order were some of the securities that Competitive Associates Inc. owns. In addition, Mr. Markizon reported that Mr. Randolph had previously testified before the Securities & Exchange Commission in this matter. Mr. Markizon additionally reported that he had that morning done an inspection and that Mr. Yamada's files disclosed several troubling matters which bear on his veracity. Mr. Yamada's files on Sovereign American Arts do not disclose that it is in the business which he disclosed to the Competitive Associates Inc. Board. It is clear that Mr. Yamada has been involved with securities of Hair Extension Centers, Inc. at various times because the files disclose that he and John Galanis wrote a put on the stock. Mr. Yamada told the Competitive Associates Inc. Board at the last Meeting that he had never had any connection with a Hair Extension Centers transaction. It also appears that some shares of Hair Extension Centers, Inc. may have been placed as collateral for a loan. The file on Regal Crest did not disclose that it was in the kind of business which the Board was led to believe that it was in.

Mr. Risman then called on Mr. Philip N. Smith, Jr. to report on Mr. Randolph's testimony before the Securities & Exchange Commission. Mr. Smith represented Mr. Randolph and the Fund at the proceeding. He reported that several of the facts which Yamada had related to the Board at the last Meeting were clearly not true. This related to comments related to the existence of the proceeding itself; dealings with Hair Extension Centers, Inc.; incidents surrounding the Kennington Note and the Takara Partners Portfolio. Mr. Levin also responded with more details concerning Mr. Yamada's veracity as it related to his dealings

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in Hair Extension Centers, which tended to refute his comments that he had no relationship to that company. The Board then reviewed discussions which it had with Yamada in January, the facts that he related to them and the additional and countervailing facts that the attorneys in their investigations had been able to ascertain. Mr. Smith and Mr. Eisenberg reported on the findings that had been made when reviewing the transcripts of Mr. Yamada's previous testimony for the Securities & Exchange Commission. In some of the matters mentioned above, they found testimony at that time, to be different from his discussion before the Board in January. The Board was greatly disturbed at the quality of the securities purchased by Takara for the Fund and his failure to tell the truth concerning so many matters. The Board reviewed Takara's purchases on behalf of the Fund and was disturbed by the quality of the stocks which they purchased. Mr. Levin disclosed that Mr. Yamada was indebted to Provident Securities, Inc. and that many of the other accounts that securities purchased by Takara were of companies which had connections with Provident or had used them for an investment banker. The Board specifically reviewed each security in the Takara portion of the portfolio. After being duly moved and seconded, it was unanimously

RESOLVED: To request the resignation of Takara Asset Management Corporation as a Portfolio Manager of the Fund effective immediately and failing to receive such resignation, the Officers shall be and hereby are authorized to take all steps necessary to terminate Takara's tenure as a Portfolio Manager as soon as possible. And be it

FURTHER RESOLVED: That the Minutes for the "Takara Segment" of the Board Meeting of January 13, 1971, be and hereby are approved as recommended by Mr. Markizon. And be it

FURTHER RESOLVED: That the Board should not ratify Takara purchases at this Board Meeting and that the Officers shall be and hereby are directed to investigate Takara purchases and report those findings to the Board at the next meeting. And be it

FURTHER RESOLVED: That the Board does hereby ratify the purchases recommended and made by the Shaw Management Corporation since the last Board Meeting.

After further review by the Board Members, particularly the report of Mr. Randolph of what he had learned about Fantastic Fudge, Inc. and



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Firefly Enterprises, Inc. subsequent to their purchase by Mr. Yamada. Mr. Randolph related that in both cases, the companies did not have products, very few employees and in addition, Competitive Associates Inc. owns a disproportionate number of shares of the total shares in public hands. It was moved and seconded and unanimously

RESOLVED: That Mr. Randolph be instructed to sell Fantastic Fundge, Inc. and Firefly Enterprises, Inc. as soon as possible.

The Board then moved to the consideration of who should manage Takara's portion of the portfolio during the period immediately subsequent to the resignation or termination. The Board had not, up to that time, searched for new Portfolio Managers and therefore, it was believed to be imprudent to select one without further study. The Board then discussed the possibility that Mr. Randolph, on behalf of Competitive Capital Corporation be permitted to manage the Fund. Companies of which Mr. Randolph is President and which manage the assets of two other mutual funds, are affiliates of The Seaboard Corporation -- Admiralty Fund and The Income Fund of Boston, Inc. In addition, he manages private accounts in his capacity as President, Chairman of the Board and Chief Executive Officer of Chancellor Management Corporation, a registered Investment Adviser. The Board then discussed the problem created by the fact that Competitive Capital Corporation had not been chosen as a Portfolio Manager by the shareholders and that it might have conflicts with its role as a Fund Manager for Competitive Capital Fund. The Board then discussed the possibility of an investment committee to supervise Competitive's work. It was then duly moved and seconded and unanimously

RESOLVED: That Competitive Capital Corporation shall act as a Portfolio Manager for the period immediately following Takara Asset Management's resignation or termination and that it shall function as such until the next meeting of the Board of Directors. And be it

FURTHER RESOLVED: That before Competitive Capital Corporation may effect any investment transactions for Competitive Associates Inc. that each such transaction be approved of in advance by an investment committee made up of Mr. Randolph and any two unaffiliated Directors. And be it

FURTHER RESOLVED: That Competitive Capital Corporation shall not be paid as a Portfolio Manager for its services hereunder, although it may continue to be paid appropriate compensation as the Fund Manager as provided in the Fund Manager's Contract.

## DEFENDANT'S EXHIBIT M

The Directors then discussed the future of the Fund and the various possibilities open to them. The Board discussed whether a replacement should be found for Talara's portion of the Fund's assets, or whether the structure of the Fund should be changed so that it would be managed as a conventional Fund. The discussion was tabled pending recommendation to be made by the Officers at the next Meeting.

Mr. Risman then introduced the topic of the Dividend. Competitive Associates Inc. has not declared a dividend since its inception and the Treasurer's Report disclosed that there was sufficient income to pay \$.20 (20¢) per share out of income. Mr. Boesel raised the question as to whether or not such dividend would be practicable to shareholders and whether or not the Internal Revenue Code, Subchapter M, required this dividend to be paid. Mr. Markizon replied that the Internal Revenue Code did not require that this dividend be paid at this time to qualify the company for a regulated investment treatment under Subchapter M. He said that he would check on the problem as to its taxability to the shareholders and left the room. Mr. Risman proceeded to review the problem of the non-payment by shareholders of the \$.50 (50¢) per quarter service charge that is awaiting payment out of the proceeds of any distribution. He reviewed the problem of the Fund caused by the fact that such charge has not been collected since the inception of the Fund and also the fact that the shareholders by their communications with the Fund had indicated their desire to have a dividend. He indicated that the accountants were asking that either the service charge be paid or the receivable to the Fund be written off. Mr. Markizon returned with the news that the accountants could not give advice until the end of the Fund's fiscal year, March 31, 1972, as to whether or not this dividend would be taxable to shareholders. Mr. Boesel then said that we should await payment of that dividend until such time as the tax status would be known. Upon motion duly made and seconded, it was, by a six-to-one vote, with Mr. Boesel voting against,

RESOLVED: That a dividend of \$.20 (20¢) out of income be paid on June 15, 1971 to shareholders of record of May 26, 1971.

Mr. Risman then called on Mr. Randolph to discuss the valuation of the securities which do not have a readily available market. The only securities owned by the Fund which the Board must value are those securities of Four Seasons Nursing Inns of America, Inc. and its subsidiaries, all of which are under the protection of the Bankruptcy Court sitting at the U.S. District Court for the Western District of Oklahoma. Mr. Randolph was not optimistic about realizing value from any of the securities, although it is always possible that a reorganization or a successful lawsuit might convey some benefits on common shareholders. Mr. Randolph pointed out that the marketplace, of course, had taken into consideration Four Seasons' bankrupt condition.



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valued at 50% of market value as have the Fund's holdings of Four Seasons Equity Corporation. The Board has in the past placed no value to Warrants that the Fund owns for purchase of Four Seasons Franchise Centers, Inc. Common Stock no later than December 31, 1974. Mr. Randolph reminded the Board that the reason for the discount of the shares of Common Stock of the parent and subsidiaries is that the securities are restricted as to sale prior to registration pursuant to the Securities Act of 1933. Upon motion duly made and seconded, it was unanimously

RESOLVED: That the Board of Directors value the common stock of Four Seasons Nursing Centers of America, Inc. at 50% of the market value and set the valuation as fair and reasonable in the opinion of the Board. And be it

FURTHER RESOLVED: That the Board of Directors value the Fund's holdings of Four Seasons Equity Corporation at 50% of the market value and that such a valuation is fair and reasonable. And be it

FURTHER RESOLVED: That the Board of Directors ascribe no value to the Warrants for the purchase of Four Seasons Franchise Centers, Inc. held by Competitive Associates Inc.

Mr. Risman then called upon Mr. Markizon to discuss the Fund's proposed loan agreement with The Bank of California. Mr. Markizon related that the Portfolio Managers of the Fund had been fully invested, as of late, and that redemptions, although not of a great amount, have caused the Fund to have invested more than 100% of assets. The Fund has the authority to borrow money and it was proposed that the Fund temporarily borrow up to \$500,000 pursuant to a standard loan agreement with The Bank of California, N.A., which had previously been distributed to the Board. Mr. Markizon reported that the interest rate proposed by the Bank was a prime interest rate plus 2% and Messrs. J. Perry-Smith and Boesel replied that this rate was significantly higher than had been charged mutual funds under similar circumstances. Mr. Barron, the President of a bank, also indicated that the rate was too high. Upon motion duly made and seconded, it was unanimously

RESOLVED: That the officers of Competitive Associates Inc. be and hereby are authorized to enter into certain loan agreements with the Bank of California, N.A. to borrow up to \$500,000 on a temporary basis at an interest rate which shall approximate 1% more than prime. The Board of Directors, by this Resolution does not endorse a policy at this time of buying on margin as a Fund policy, but such credit is to be used only to permit the funds which they invested to stay at a current level of absolute dollars, notwithstanding redemption.



DEFENDANT'S EXHIBIT M

Mr. Risman then called for new business. Mr. Levin was then recognized. Mr. Levin reviewed his firm's service as counsel to Competitive Associates Inc. for more than two years and indicated that for the last several months much of the legal work for Competitive Associates Inc. was done internally by its officers and to some extent on special matters by Lawler, Sterling & Kent. He indicated that as the change in Management of the Fund had occurred smoothly and now that the transition period was over, it was his firm's desire to resign as counsel to the Fund. Mr. Risman, on behalf of himself and the rest of the Board, thanked Mr. Levin for the services they had rendered to the Fund and for seeing it through the transition period. It was then moved and seconded and it was unanimously

RESOLVED: That the Board of Directors accept the resignation of the firm of Marshall, Bratter, Greene, Allison and Tucker as counsel to the Fund.

Mr. Risman then said that the discussion for new counsel to the Fund was in order and he indicated that Lawler, Sterling & Kent was counsel to the Admiralty Fund and The Income Fund of Boston, Inc., two other Funds managed by affiliates of The Seaboard Corporation, and that they were also counsel to the Fund Manager, Competitive Capital Corporation, and other Fund Manager affiliates of Competitive Capital Corporation. In addition, Lawler, Sterling & Kent is general counsel to The Seaboard Corporation, the parent of Competitive Capital Corporation. Mr. Risman indicated that it was his opinion that a satisfactory job had been done for those Funds by Lawler, Sterling & Kent and that the work they had done in the past for Competitive Associates Inc., on special matters, had also been most satisfactory. Mr. Risman disclosed that a partner of Lawler, Sterling & Kent, Peter Landau, was President of The Seaboard Corporation, the parent of the Fund Manager. After some discussion, which included questioning by the independent Directors of possible conflicts involved with Lawler, Sterling & Kent's being counsel to the Fund Manager and to the Fund and with those comments being responded to by the representatives of Lawler, Sterling & Kent, who were present, that on any matters which the Board felt was necessary, they would resign as counsel and that on matters of major significance and/or conflict apparent to them, they would discuss with the Board any attendant problems. It was then moved and seconded and unanimously (except for the abstentions of Messrs. Risman and Randolph)

RESOLVED: That the law firm of Lawler, Sterling & Kent be retained as counsel to the Fund.

Mr. Risman called for any other new business. Seeing that there was none, he called for a motion for adjournment. Upon motion duly made and seconded it was unanimously

VOTED: To adjourn.  
Adjourned.  
A true record.

ATTEST:

  
Alan R. Markison, Secretary

DEFENDANT'S EXHIBIT N

IRA ASSET MANAGEMENT CORP.

Date: May 14, 1971

SHARES		MARKET		COST	
Admiral International Enterprises	60,000	\$ 408,730	\$ 421,706		
Atlantic Richfield	3,000	372,500	283,554		
Boleyn Financial	40,000	570,000	600,000		
Boise Cascade Corp.	3,000	232,000	280,785		
Camco Inc.	3,000	69,000	70,789		
Childrens World Inc.	13,000	56,250	65,250		
Columbia Pictures	13,450	206,643	246,305		
Cowles Communications	5,000	60,000	63,039		
Digital Technology Units	12,000	38,000	48,000		
Diversified Medical Corp.	10,000	99,750	262,000		
Electrograph Dynamics Units	40,000	670,000	641,250		
E. O. & G. Inc.	1,000	27,500	21,000		
Elcom Seaboard Inc.	25,000	221,375	688,684		
Emeryco Flyge Inc.	44,000	420,000	437,000		
Five Fly Enterprises	13,010	135,163	140,015		
Four Seasons Equity Corp.	5,625	3,515	200,000		
Four Seasons Nursing Centers of America Inc.	15,000	9,375	900,000		
Galeo Leasing System	40,000	140,000	514,000		
Gulf Resources & Chemical Corp. cv 6/1/4 '91	500M	480,000	206,505		
International Control	24,700	262,437	204,500		
International Health Sciences, Inc.	20,000	200,000	200,700		
Katy Industries Inc.	20,000	262,025	311,000		
Marketing Resources & Applications	10,000	213,750	211,167		
Netstar Electronics Inc.	16,600	331,800	634,038		
Oceanic Petroleum	10,000	34,125	68,250		
Oceanics System	31,000	191,400	206,500		
Pacific Enterprises	230M	251,275	260,000		
Pennaco United CV 5 1/4 '63	300M	207,500	165,783		
Pennaco Corp. CV 5 1/4 '65	5,150	20,300	54,000		
Peterson Carriage Estates	25,000	30,025	167,000		
Regal Crest Inc.	50,530	36,274	182,031		
Reynolds Properties	30,000	133,750	200,000		
Ryanair Packing	10,000	216,200	100,000		
Southwest Forest Ind.	45,000	123,700	204,105		
Sovereign American Arts	43,000	282,000	366,030		
Synchronex Corp. Class A					

DEFENDANT'S EXHIBIT N

PAKARA ASSET MANAGEMENT CORP.

	<u>SHARES</u>	<u>MARKET</u>	<u>COST</u>
Systems Engineering Lab.	15,000	163,750	254,540
Unit /stem	9,000	45,000	53,750
Visual Sciences	32,000	304,000	329,375
Western Airlines	13,000	414,375	254,540
ElectrogasDyramic - common	5,000	54,375	58,750
		<u>\$ 8,514,002</u>	<u>\$10,636,759</u>



1           Q     You have come into the knowledge eventually  
2     that some of the over-the-counter stocks like Electrogas-  
3     dynamics, Fire Fly Enterprises and Regal Crest were traded  
4     in the marketplace by a group of people who artificially  
5     maintained the price in those stocks; is that correct?

6           Mr. Markizon:  Objection.  That is not in the  
7     record.

8           Mr. Stoppelman:  I am asking him if he came  
9     into that knowledge.

10          Mr. Markizon:  I am sorry.

11          A     It would have to be purely an assumption on my  
12     part.  I couldn't say I knew it.

13          By Mr. Lewis:

14          Q     I may go back to some of these securities, but  
15     I think your testimony seems to indicate that the same  
16     pattern was true for most of the over-the-counter  
17     securities Mr. Yamada was purchasing; is that correct?

18          A     Yes.

19          Q     What happened to the markets in these securities  
20     after Yamada was fired from Competitive Associates?

21          A     I didn't follow every market as to what happened  
22     to them.  A few I knew what happened to them.

23          Q     I am saying immediately after.  I think there  
24     was some attempt to liquidate some of these stocks from  
25     the portfolio.

1 A Yes.

2 Q What happened?

3 A Mr. Randolph decided he wanted to sell certain  
4 securities and Fantastic Fudge was one of them and Fire  
5 Fly Enterprises and I think Regal Crest and he, like  
6 any trading situation, when a trader knows there is stock  
7 around, and must have been close enough to Aki to know  
8 he was gone, and I think that any good trader would drop  
9 a certain amount -- it is ridiculous the way they did  
10 drop them -- to try to protect themselves.

11 Q Tell us what happened, if you remember any  
12 particular stock?

13 A Well, Fantastic Fudge dropped overnight quite  
14 a few points from what it was selling prior to the knowledge  
15 that Aki wasn't going to be funding.

16 Q So, in essence, would I be wrong in saying  
17 the bottom dropped out of the stocks?

18 Mr. Smith: Wait a minute.

19 I object to that.

20 The Witness testified some of the stocks  
21 dropped substantially. I don't think it has to be character-  
22 as the bottom dropping out or anything else.

23 By Mr. Lewis:

24 Q You found out it became difficult to trade the  
25 stocks at the levels of prices that existed immediately

9/1/71  
DEFENDANT'S EXHIBIT S

MEMORANDUM

TO: Michael Risman  
FROM: Alan R. Markizon *ARM*  
RE: Trip to the East

There are two main items which I must accomplish away from Los Angeles in mid-March and in an attempt to save expenses for the company I propose that they be combined in one trip. In addition, there are other items which I will explain below which need be done which would not necessitate a trip in itself, but while in New York, should be done in Washington. In addition, after a discussion with Jerry Randolph today, he has found out that the European money he was talking about the other night is not tainted money and he believe he will be going to Europe in the fourth week in March to seek it and must stop in Ohio for two meetings in the third week of March. Putting these two schedules together, it appears that the most economical way to do things, fitting both our schedules



DEFENDANT'S EXHIBIT S

together is as follows:

Wednesday, March 17, 1971  
Portfolio Managers' Meeting in New York

Thursday, March 18, 1971 and Friday, March 19, 1971  
Visit to the offices of the five Portfolio Managers

Monday, March 22, 1971 and Tuesday, March 23, 1971  
Washington, D.C.

- Irwin Borowski - Division of Trading & Markets  
Attempt to find out the story on Yamada from him and  
solicit their help with corporation regulations in getting  
rid of them without a shareholder vote
- I will stop in at the Anti-Trust Division in the Department  
of Justice to seek support for our Section 11(d)(1) memo.  
On that subject, I will probably also stop in to see Ezra Weiss.
- I will want to spend a couple of hours meeting with some  
of the Muskie people.
- Phil Smith and I will also get together to push through  
the last round of proxies and prospectuses before filing  
them with the Commission.

Wednesday, March 24, 1971  
Stop in Chicago to see the Midwest Stock Exchange in an  
attempt to secure their support for our Section 11(d)(1)  
memo and proposal to the Commission.

Thursday, March 25, 1971 and Friday, March 26, 1971  
Denver, Colorado  
Take depositions on the Dudley case.

Monday, March 29, 1971 and Tuesday, March 30, 1971  
I would like to have off to ski.

Wednesday, March 31, 1971 - morning  
Return to the office

I believe that winning the 11(d)(1) resolutions in our favor will

be very important to us as company in the future, because I am be-

DEFENDANT'S EXHIBIT S

ginning to believe that wholesaling for an equity funding program, something that Equity Funding Corporation has no desire to do, will give us three benefits:

- 1) Allow us to offer a product that will force dollars into our funds;
- 2) Give us override on others' insurance commissions; and
- 3) Place us in a very great bargaining position with insurance companies because of the volume of business.

Therefore, when we can do things which do not cost us extra money in soliciting support, I would like to do them and I think the time spent on the above trip will be well worth it.

The schedule does not include the stop in Toronto that we have talked about because I am not sure how serious you have been about it. I am semi-serious as I would like to do it, think it needs to be done, can be done in an extra day on this trip with very little expenditure, but seek your advice as to whether or not it would really be worth our effort. I am willing.

Jerry's schedule is fluid, but all the alternative things he

DEFENDANT'S EXHIBIT S

must do would all work out no matter what if the date of the meeting in New York was March 17, 1971. However, we are not sending out notices of that meeting until you give your O.K.

Roger tells me that Singer, Mackie has started a third-market operation in New York and has been giving us business merely because they don't have other representation on the Coast. I thought I might stop in and put it on more solid ground.



Defendants (Advers) 317 f. L. D X 3  
7/18/74

COMPETITIVE ASSOCIATES INC.

DEFENDANT'S  
EXHIBIT V

MEETING OF THE BOARD OF DIRECTORS

October 9, 1970

A meeting of the Board of Directors of Competitive Associates Inc. (the "Fund") was held on October 9, 1970 at the office of Lawler, Sterling & Kent, 500 Fifth Avenue, New York, New York at 11:00 a.m. pursuant to written notice. Messrs. Richard E. Boesel, Jr. and Arthur J.C. Underhill, being two of the three duly elected directors, were present and thus a quorum was present. At the invitation of the Directors, Messrs. Michael Risman, J. Perry Smith, Jerome R. Randolph, Henry Homes, Jr., James B. Barron, Peter Landau, Meyer Eisenberg and Philip N. Smith, Jr. of Lawler, Sterling & Kent (counsel to the Fund Manager) and Messrs. Ezra Levin and Gerald Lerman of Marshall, Bratner, Greene, Allison & Tucker (counsel to the Fund) were also in attendance.

Mr. Randolph called the meeting to order and Mr. Risman acted as Secretary and kept the records of the meeting.

The minutes of the prior meeting of the Board held on on June 25, 1970 were distributed and the Board read and discussed the minutes and asked the Secretary to delete the proposal that the Fund Manager could manage assets of the Fund on an interim basis in an emergency. A motion was then made and seconded and it was unanimously

RESOLVED: That the minutes of the meeting of the Board of Directors of the Fund held on June 25, 1970 as corrected above, be and they hereby are approved.

The Board was then advised that the previously adjourned shareholders meeting had met, that a quorum had been present at the meeting, and that a majority of the votes of the shareholders had approved the resolutions proposed by management including the election of the slate of directors proposed in the proxy material to serve until the next annual meeting of shareholders and/or until their successors were chosen. The Board then welcomed the newly elected Directors -- Messrs. Risman, Smith, Randolph, Homes and Barron -- who took their seats as Directors and the meeting then continued.

DEFENDANT'S EXHIBIT V

Competitive Associates Inc.  
Meeting of the Board of Directors  
October 9, 1970

Page 2

Mr. J. Perry Smith then asked if election of officers to serve until the next shareholders meeting was in order. Assured that it was, Mr. J. Perry Smith then proposed the following slate of officers to serve until the next organization meeting of the Board of Directors and until their respective successors are elected and qualified, or as otherwise provided in the By-Laws of the Fund:

Jerome Robert Randolph	President
Michael Risman	Vice President
Alan R. Markizon	Secretary
Walter Latimer	Treasurer
David Servente	Assistant Treasurer

Upon motion duly made and seconded it was unanimously

RESOLVED: That each of the above named nominees be and they hereby are elected to the office set forth opposite his respective name to serve until the next organization meeting of the Board of Directors or until his successor is elected and qualified, or as otherwise provided in the By-Laws of the Fund.

Mr. Boesel then asked the Board to accept his resignation as Chairman of the Board. Upon motion duly made and seconded, it was unanimously

RESOLVED: To accept the resignation of Richard E. Boesel, Jr. as Chairman of the Board of Directors.

Mr. Smith then proposed that the Board adopt a policy of making no investments in "restricted securities" as defined in the Fund's most recent prospectus, unless prior written approval was granted by the Board of Directors. Upon motion duly made and seconded, it was unanimously

RESOLVED: That the Fund make no investments in restricted securities unless prior written approval thereof is granted by the Board.



DEFENDANT'S EXHIBIT V

Competitive Associates Inc.  
Meeting of the Board of Directors  
October 9, 1970

Page 3

Mr. Randolph requested that the Board authorize him to execute new Portfolio Manager and Fund Manager Agreements with newly appointed Portfolio Managers and with the Fund Manager.

Mr. Boesel asked about the supplemental letter attached to the proxy and the apparent inaccurate information given to the Board at their last meeting. Mr. Randolph assured him that notwithstanding the supplemental letter indicating an apparent misstatement, at the time of the previous Directors Meeting all such information was accurate and in no way misleading; it was only due to the timing of the press release and that the press release was distributed after the close of the second quarter which changed slightly certain facts as to the performance of the Managers.

Mr. Randolph responded to questions as to the meetings between the Fund Manager and the new Portfolio Managers. Questions were raised concerning particularly Takara Management Company. Mr. Randolph discussed the resignation of one of their top managers but assured the Board that this would not severely hinder the capability of the company. Mr. Boesel then inquired about rumors of an investigation of Mr. Yamada. Mr. Eisenberg explained that while there had been rumors of some investments Mr. Yamada made in Hair Extension Center, no evidence had been uncovered of any wrongdoing or of anything irregular. Mr. Boesel then moved and Mr. Smith seconded the motion that was then unanimously

RESOLVED: That the President of the Fund be and hereby is authorized to sign on behalf of the Fund, the new Fund Manager and Portfolio Manager Agreements, in the form approved by shareholders at their annual meeting.

Mr. Levin raised the question concerning the reasonableness of the amount contributed by the Fund to pay the bills presented by Lybrand, Ross Bros. Montgomery to the Fund, Competitive Capital Fund, Competitive Capital Corporation and The Seaboard Corporation. After discussion of the contribution made by each of the foregoing funds toward payment of the entire bill, a letter signed by officers of each of the funds addressed to counsel for the Fund was read to the Directors and a copy was ordered filed with the records of the Corporation. Counsel suggested that the Board appoint a committee to review the issues presented and



Competitive Associates Inc.  
Meeting of the Board of Directors  
October 9, 1970

Page 4

make a final determination on the matter, which would be binding on the Board. It was then unanimously

RESOLVED: That a two-man committee of Messrs. Boesel and Homes be and they hereby are authorized to review and determine the reasonableness of the contribution made by the Fund to the bill by Lybrand, Ross Bros. & Montgomery for professional services rendered to the Fund, Competitive Capital Fund, Competitive Capital Corporation and The Seaboard Corporation and any such determination shall be final and binding on the Board of Directors.

Mr. Eisenberg then was called upon to discuss the possible recapture by the Fund of commissions on transactions executed by The Seaboard Corporation's Pacific Coast Stock Exchange "PCSE" affiliates -- The Seaboard Funds Distributors, Inc. ("Distributors") and The Seaboard Planning Corporation ("Planning").

Mr. Eisenberg noted the Directors' duty to bargain on behalf of the Fund on such matters as the management contract and stated that Directors should consider any recapture arrangement in the light of management compensation generally and with a view to obtaining an equitable share of brokerage commissions for the Fund. Mr. Eisenberg discussed the different arrangements now in existence in other fund groups (e.g. IDS, Waddell & Reed).

It was pointed out that Judge McLean had approved the settlement in the Dreyfus case which could be interpreted to support the view that Management could keep the entire profit on Fund related brokerage. He advised the Board that, in his view, the Dreyfus settlement did not decide the issue of whether Management could refuse to negotiate a recapture arrangement with the Fund and certainly did not preclude the Fund from obtaining a portion of the commissions on transactions put through Seaboard's PCSE seats.

Competitive Associates Inc.  
Meeting of Board of Directors  
October 9, 1970

Page 5

The Board reviewed the types of brokerage available for return through offset against the Fund's advisory fee and, after discussion of the matters raised, agreed to approve a recapture or offset arrangement whereby the Fund would obtain a benefit equal to 50% of the net, after tax, profit of Seaboard's regional affiliate on Fund transactions, whether direct or attributable to the Fund. This proportion, it was noted, is significantly more advantageous to the Fund than the Waddell & Reed formulation which, on a similar basis, returns only approximately 40% of the net profits to their funds. It was also noted that this arrangement was as good an arrangement as any of the Funds affiliated with Seaboard.

Under the arrangement, the Seaboard affiliate would continue to retain 100% of commissions earned by Distributors and Planning which were not attributable to the Fund. As part of the arrangement, however, the affiliate, insofar as possible, would credit to the Fund all Fund-related underwriting commissions and tender offer fees.

The Board noted that fund brokerage would continue to be directed to brokers who have provided research, statistical and other services to the Portfolio Managers and to sellers of Fund shares, to the extent available without agreements regarding ratios, proportions or understandings as provided in the prospectus of the Fund. All transactions, the Board noted, would continue to be directed so as to achieve best execution and price for the Fund whether on the New York Stock Exchange, regional exchanges, the Third Market or otherwise.

Upon due consideration and in view of

1. The opportunity to obtain a reduction in the Fund's management fee through recapture arrangements available to Seaboard's PCSE affiliates, and

2. The potential benefit to the Fund considering the potential conflict of interest question, the return of commissions, and the requirement to obtain best execution, and

3. With the understanding that the Fund's trading will continue to be done on a basis most favorable to the Fund, upon motion duly made, seconded and unanimously carried, it was:



Competitive Associates Inc.  
Meeting of Board of Directors  
October 9, 1970

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RESOLVED: That the proposed arrangements for the direction of Fund brokerage to Distributors in return for a credit of 50% of the net, after tax, profit (defined in accordance with generally accepted accounting principles) on Fund-related brokerage of the Seaboard affiliates to the Fund, consistent with the requirements contained in the Fund's prospectus to obtain best execution with all credits to be used to reduce maximum expenses payable by the Fund, be and hereby is approved.

Mr. Underhill then requested that the Board be advised on a regular basis as to recent developments and changes in portfolio and personnel. It was suggested that the Fund Manager should make sure that each month, sufficient information be sent to all Directors to keep them advised of all material developments involving the Fund. (He suggested more frequent reports on the financial posture of the Fund, its Manager, and The Seaboard Corporation as well as reports on current sales and redemptions.)

Mr. Boesel then inquired as to the financial posture of the Fund Manager, Competitive Capital Corporation, and the owner of its stock, The Seaboard Corporation. Mr. Landau responded by advising the Board that in the first six months of 1970, Seaboard had lost \$1.1 million and a \$600,000 loss in the third quarter appeared to be a valid estimate. Mr. Landau also appraised the Board that there was a substantial decline in assets under management -- that income had been greatly reduced -- and that the cash situation was reasonably poor. However, the company had little debt and management was looking for ways to secure additional financing and had taken substantial steps to cut back on its expenses in an attempt to make the income and expenses meet.

Mr. Risman then asked the Board to consider the renewal of the Fidelity Bond as required by Rule 17(g)(1) of the Investment Company Act of 1940. Mr. Lerman explained to the Board the need for this Bond and the purpose of the Board's considering this issue at this time. In the past, the Board had taken the position that \$200,000 coverage was ample. Upon motion duly made and seconded, it was unanimously

RESOLVED: That the continuation of a \$200,000 Fidelity Bond in compliance with Rule 17(g)(1) of the Investment Company Act of 1940, be and hereby is approved.



DEFENDANT'S EXHIBIT V.

Competitive Associates Inc.  
Meeting of Board of Directors  
October 9, 1970

Page 7

Mr. Randolph then requested that the Board consider the restricted securities in the portfolio and value them accordingly. Common stock of Four Seasons Equity Corporation and Four Seasons Nursing Centers of America, Inc. and warrants of Four Seasons Franchise Centers, Inc. had been issued by a single company which had filed a petition under Chapter X of the Bankruptcy Act. Mr. Boesel explained that the Fund had 11,250 shares of the parent holding corporation, 30,000 shares of the common stock of the operating subsidiary and 8,654 warrants of another affiliate. Mr. Randolph explained to the Board that there had been only limited over-the-counter trading in each of the issues since the petition in bankruptcy was filed and thus there was no reliable guide as to true market value. Upon motion duly made and seconded, it was unanimously

RESOLVED: That the Board value the holdings of Four Seasons Equity Corporation, Four Seasons Nursing Centers of America, Inc. and Four Seasons Franchise Centers, Inc. warrants at 50% of the most recent market trades.

It was then suggested that in accord with Section 32(5) of the Investment Company Act of 1940, the Treasurer and the Assistant Treasurer should be authorized to assist in the preparation of financial statements filed for the Fund. Upon motion duly made and seconded, it was

RESOLVED: That the necessary authority for the Treasurer and the Assistant Treasurer for purposes of assisting in the preparation of financial statements of the Fund be and hereby is approved.

There being no further business to come before the Board, upon motion duly made and seconded, it was unanimously

RESOLVED: To adjourn.  
Adjourned.  
A true record.

COMPETITIVE ASSOCIATES INC.

601 WILSHIRE BOULEVARD, BEVERLY HILLS, CALIF. 90210 • 278-8500

5 October 1970

Gerald Lerman, Esq.  
Messrs. Marshall, Bratter, Greene,  
Allison & Tucker  
430 Park Avenue  
New York, New York 10022

Dear Mr. Lerman:

In order that you may give Lybrand, Ross Bros. & Montgomery, the Fund's former accountants, a "clean" letter concerning the current status of the Fund so that they will permit the filing of a Post-Effective Amendment on Form S-5, you have asked that we confirm to you the reasoning by which it was decided that Competitive Associates Inc. would pay Lybrand \$35,000 in settlement of its bill which they alleged to be due.

The officers of the Fund and Fund Manager disagreed with all of Lybrand's time records and have made their own judgment as to each entities' liability to Lybrand. Prior to the recent negotiations with Lybrand, it was the position of the officers of the Funds (Competitive Capital Fund and Competitive Associates Inc.) and their Fund Manager that Lybrand's billings were excessive, unwarranted and should not be paid. On September 1, 1970, Lybrand informed this Fund that it would not work on its filing on Form S-5 until the entire subject of billings was resolved. This Fund and its affiliates would not have made further payments absent Lybrand's refusal to work on the filing. As you know, the entire matter was settled by a further payment to Lybrand of \$35,000. For the reason indicated below, the officers of this Fund agreed that Competitive Associates Inc. was the proper party to pay that bill.



Gerald Lerman, Esq.

DEFENDANT'S EXHIBIT V

Messrs. Marshall, Bratter, Greene,

Allison & Tucker

5 October 1970

Page two

During this evaluation, we considered two criterion: first, judgments by our internal audit staff as to the amount of time the Lybrand people should have spent on the work of each company; and second, the billings by Lybrand itself. (The four entities involved are Competitive Associates Inc., Competitive Capital Fund, Competitive Capital Corporation and The Seaboard Corporation.) Lybrand had previously agreed that The Seaboard Corporation owed no further money. Competitive Capital Corporation had previously paid approximately 75% of its billings. Competitive Capital Fund had paid \$145,000 of \$209,000 of billings. Prior to the recent negotiations, Competitive Associates Inc. had paid slightly more than half of its previous billings. After the payment, Competitive Associates Inc. had paid slightly more than half of the amount paid by Competitive Capital Fund. For the period from inception of the Fund until March 31, 1970 (approximately 13 months) Competitive Associates Inc. had two unique problems which should have caused its audit fees to be disproportionate to its assets. First, it was a new fund and the start-up accounting costs were very high. Second, the extremely high turn-over rate in conjunction with the audit problems caused by short selling also should have caused an escalation of the audit fees.

After serious consideration of the above, it was the officers' decision that the \$35,000 should be paid by Competitive Associates Inc. and under the circumstances relating to Lybrand's position in its letter of September 1, 1970 to this Fund it is fair to the shareholders of Competitive Associates Inc., Competitive Capital Fund and The Seaboard Corporation. This report will be made to the Board of Directors at the next meeting, tentatively scheduled for October 9, 1970.

In accordance with your conversation of October 5, 1970 with Alan R. Markizen, we trust that this will enable you to give Lybrand the "clean" letter it requests.

Sincerely yours,

COMPETITIVE ASSOCIATES INC.

Jerome R. Randolph  
President

Walter W. Latimer  
Acting Treasurer



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

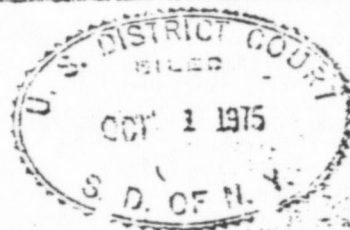
----- x  
COMPETITIVE ASSOCIATES, INC., :

Plaintiff, :

- against - :

ADVEST CO., :

Defendant. :  
----- x



72 Civ. 1847

#43166

A P P E A R A N C E S:

Messrs. Butowsky, Schwenke & Devine  
230 Park Avenue  
New York, New York 10017  
by S. Pitkin Marshall, Esq.  
Michael C. Devine, Esq.  
Attorneys for Plaintiff

Messrs. Day, Berry & Howard  
One Constitution Plaza  
Hartford, Connecticut 06103  
by Philip S. Walker, Esq.  
Attorneys for Defendant  
Advest Company

Messrs. Feldshuh & Frank  
144 East 44th Street  
New York, New York 10017  
by Donald A. Derfner, Esq.  
Attorneys for Defendant Provident Secur-  
ities, Inc. and Pericles Constantinou

CARTER, District Judge

O P I N I O N

Plaintiff Competitive Associates Inc. (Competitive) is an open end mutual fund. During the period with which this litigation is concerned, it maintained an aggressive investment policy of seeking capital appreciation through investment techniques that might involve considerable risks. (Exhibit G, p.3). The amended complaint alleges the purchase by plaintiff between January 19, 1971 and April 28, 1971, of various blocks of stock of Fire Fly Enterprises, Inc. (Firefly) from the defendants. It alleges violations of Sections 5(a) and 12(1) of the Securities Act of 1933, 15 U.S.C. §§77e(a), 77c(1), in that the securities were sold without being accompanied or preceded by delivery to plaintiff of a prospectus of Firefly. Plaintiff also alleges violations of Sections 11, 12(2), 17(a)(1), 17(a)(2) and 17(a)(3) of the 1933 Act, 15 U.S.C. §§77k, 77c(2), 77q(a)(1), (2), (3), and Sections 10(b) and 15(c) of the Securities Exchange Act of 1934, 15 U.S.C. §§78j(b), 78o(c), for material omissions and misrepresentations in the prospectus and deception in the offer and sale of the securities to plaintiff. The complaint originally named a large number of defendants, but by the time the case had been reached for trial the dramatis personnel had been radically reduced.

The claims against defendants Firefly and its officers and directors, Louis Rudolph, Clyde Davis, Lark Washburn, Monroe V. Korn, Donald Gary, Aaron Sobel, Carol Gary and Phillip Kaye, had been settled, and they were out of the case. Similarly, the claims against Chartered New England Corp. and Sherwood Securities Corp. had been settled and they were dropped from the action. Defendant Provident Securities Inc. is presently in liquidation; defendant Constantinow is in bankruptcy. Thus the only defendant remaining at trial was Advest, a broker-dealer, member of the New York Stock Exchange (NYSE), the American Stock Exchange (AMEX), other exchanges and the National Association of Securities Dealers.

A key figure in this controversy, Akiyoshi Yamada, never appeared. Yamada, a product of Harvard Business School, came to Kuhn, Loeb & Co. in New York in 1965, had a meteoric rise there, and in 1969 left the company to form his own firm, Takara Partners. In 1970, plaintiff and Takara Asset Management Co., Inc. (one of Yamada's properties) negotiated an agreement pursuant to which Yamada, as the alter ego of Takara Asset, became one of the portfolio managers of Competitive. Yamada's appointment was approved by plaintiff's



stockholders on October 9, 1970, but even as approval was being voted by the shareholders in Beverly Hills, California, inquiry was being made at Competitive's Board of Directors meeting in New York concerning rumors of an SEC investigation of Yamada. Competitive's counsel assured the Board that no evidence of any wrongdoing by Yamada had been uncovered.

The portfolio management agreement entered into between Yamada and Competitive gave Yamada free rein in securing information and assistance from third parties on whatever terms deemed appropriate in the manager's discretion. The agreement recognized Yamada's right to manage the accounts of other persons or corporations except that he was barred from managing the investments of competing mutual funds. Competitive executed its various transactions through its own trader, but the practice was for its trader to deal with the broker-dealer Yamada designated.

Peter Englebach and Yamada were friends. They met at Kuhn, Loeb & Co. and developed strong professional and personal ties. He and Yamada were roommates for a time. When Englebach left New York, he and Yamada kept in daily contact by phone. This was done in part because Yamada could secure from him

up-to-date data on quotations. Yamada also referred to Englebach various persons who had given Yamada discretionary authority to handle their accounts. Some of these people figure in the Firefly saga. Englebach and his family became limited partners (\$100,000 for one of the shares) in a hedge fund called Takara, another of Yamada's enterprises.

In 1970, Firefly decided to go public, and its public offering began on January 4, 1971. Englebach's brokerage house at that time was Woodstock in Philadelphia. He learned about the issue before the offering from Yamada and sought to have Woodstock participate in the offering as part of the selling group. The firm refused to do this. Yamada's discretionary accounts, for which transactions were effected through Englebach, secured the Firefly stock in Chartered New England through Yamada's initiation. Englebach also secured additional shares for these accounts in the after market. In March 1971, Englebach moved from Woodstock to Newburger, a division of Advest, where he remained until June, 1971.

In early April, Yamada called Englebach seeking to buy a block of Firefly stock for plaintiff's account. Englebach, of course, knew that various Yamada



discretionary accounts for which he acted as executing broker on Yamada's instructions owned Firefly stock. He testified that he called various of his customers who had the stock, asked them whether they wanted to sell, received various yes and no responses, accumulated a block of 4,350 shares and so advised Yamada. Among those persons were William Davis and Jack Shaw--Yamada's discretionary accounts. Both testified at trial that Englebach did not contact them to ask whether they wished to sell their stock but that it was sold without any advance notice to them. Englebach testified that some of the persons he contacted refused to sell, citing one Blumenthal as being in this category. While his account was not one of Yamada's discretionary accounts, Blumenthal tried to keep abreast of Yamada's doings and followed his path. In addition, the evidence indicates that only a part of William Davis' Firefly holdings were among those accumulated by Englebach in April for sale to Yamada. Davis sold his remaining Firefly shares at a later date. While these facts are far from overwhelming, they do tend to support Englebach's testimony that he checked with his clients including Yamada's discretionary accounts before taking action in respect of the sale of their Firefly stock in respect of the April transaction with plaintiff.



Shortly after advising Yamada that he had 4,350 Firefly shares for sale, Englebach received a call from Competitive's trader seeking to buy those 4,350 shares. At this point Englebach conferred with his supervisor, Samuel Swetsky. The latter in turn discussed it with Allen Weintraub, a partner. Weintraub himself spoke to plaintiff's trader, verified the legitimacy of the order and allowed Englebach to purchase the 4,350 shares from his customers for Advest's account at 6-1/2. On April 2, 1971, they were resold to Competitive at 6-3/4. Advest did not send Competitive a prospectus of Firefly in connection with this purchase.

In May, Englebach and Yamada's relationship ended when the latter reported to the Takara limited partners that their investment had been lost. In May, Competitive terminated Yamada's relationship as portfolio manager. Its Board, which in October, 1970, had heard rumors of Yamada being investigated, was met at its January 13, 1971, board meeting with some additional bad news about its portfolio manager. At that time the SEC was investigating Yamada personally and a company with which Yamada was involved about a variety of dishonest dealings. Yamada attended the meeting with counsel and assured the Board of the integrity of his operations.

The portion of the meeting in which the investigation and rumored charges against Yamada were discussed was held without a stenographer being present. The minutes were compiled from counsel's notes and approved by Yamada. The Board's concern, however, was not alleviated by Yamada's assurances. On February 8, 1971, the secretary of Competitive, Alan R. Markizon, wrote to the SEC Branch Chief of Trading and Markets, Irvin Boronski, and asked "for any information which the staff feels has a bearing on the propriety or advisability of the continued service" by Yamada as Competitive's portfolio manager. A memorandum from Markizon in re a trip east included visits to offices of the portfolio managers and a visit to Boronski to "[a]ttempt to find out the story on Yamada \*\*\* and solicit their help with corporation regulations in getting rid of them (sic) without a shareholder vote." (Exhibit S).<sup>1</sup>

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<sup>1</sup> I interpret this to mean that Mr. Markizon was seeking the aid of the SEC in firing Yamada without being required to do so by shareholder vote.



Determination

While plaintiff did not address the failure to send the Firefly prospectus to plaintiff in connection with the April 2nd sale but devoted its brief to its fraud and misrepresentation claims, defendant has addressed the question and plaintiff has replied, so apparently the issue has not been abandoned, and to keep the record clear must be disposed of.

Advest did not participate in the offering, but the April 2nd transaction occurred less than 90 days after the initial public offering of Firefly stock on January 4th, in evident violation of Section 5(b)(2), 15 U.S.C. §77e(b)(2). To hold defendant liable under that provision, however, would hardly make sense and would certainly be grossly unjust. After all it must be remembered Yanada was the portfolio manager of Competitive. He had sought to involve Englebach in the underwriting of Firefly's initial January offering, and in April, he initiated the transaction in question on Competitive's behalf. Advest verified that the transaction was bona fide through Competitive's trader. Under the circumstances, Englebach and Advest were entitled to assume that Competitive already had a copy of the Firefly prospectus. The transaction had been initiated by Competitive.



Whatever Yamada's status after May 12, he was, during the period this transaction took place, Competitive's agent with authority to negotiate for the purchase of securities on Competitive's account. Plaintiff cannot operate on a theory that Yamada and Competitive were total strangers. Englebach had the right to assume that the prospectus was in Yamada's, and therefore, in Competitive's hands at the time.

Finally, even if this claim could be sustained as a technical violation, it is time-barred, having been brought more than one year after the violation in question allegedly took place. See Section 13, 15 U.S.C. §77m. Competitive claims that the statute of limitations on a §12(1) violation is tolled during any period that the violation is fraudulently concealed. See Katz v. Amos Treat & Co., 411 F. 2d 1046, 1055 (2d Cir. 1969). <sup>2</sup>

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<sup>2</sup> Unlike the statute of limitations applicable to §§11 and 12(2), the provisions of §13 applicable to §12(1) contain no express toll during the period the violation remains undiscovered.

Whatever the merits of that contention as a general proposition, it has no merit in the context of this controversy. Competitive knew, or should have known, when it received the 4,350 Firefly shares from Advest in April that a Firefly prospectus had not been supplied.

There is no basis for tolling the statute of limitations thereafter. The claim in respect of the failure of Advest to supply a Firefly prospectus in connection with the April 2nd sale is dismissed.

The main thrust of the plaintiff's case is fraud in which Englebach and hence Advest allegedly participated. The acts which plaintiff claims give rise to §§10(b) and 15(c) violations are the same as would give rise to violations of §§17(a), 11 and 12(2) of the Securities Act of 1933. Defendant argues that Advest is not liable for the fraud of Englebach under the "controlling person" concept on the theory that those persons at Advest other than Englebach "are in some meaningful sense culpable participants in the fraud perpetrated". Lanza v. Drexel & Co., 479 F. 2d 1277, 1299 (2d Cir. 1973). Here, however, the evidence discloses that Englebach's immediate superior and a partner at Advest participated in the transaction. They discussed it and the partner authorized the sale. There



is no need to resort to a strict respondeat superior yardstick, see SEC v. Lum's, Inc., 365 F. Supp. 1946, 1964-65 (S.D.N.Y. 1973), to hold Advest liable. There was sufficient personal involvement by controlling and representative employees of Advest, excluding Englebach, to hold Advest liable, if any liability by virtue of the transaction is established.

The problem here is that the fraud was perpetrated on Competitive by or at least through Yamada. Yamada was plaintiff's agent. Competitive argues that Englebach and therefore Advest committed a 10b-5 violation in buying Firefly stock from Yamada's customers and selling that stock to Competitive without disclosing to Competitive that Yamada was in effect both a buyer and a seller. The only parties who could possibly make that claim as to Englebach are investors in Yamada's discretionary accounts for which transactions were effected through Englebach. As portfolio manager, Yamada's contract clearly envisaged that he would have private accounts. Also envisaged was the possibility of conflict in respect of Yamada's private accounts and his role as Competitive's portfolio manager. He was required to report such instances to his superiors at Competitive at once.



Englebach's role has not been shown to be sinister in this transaction. Neither he nor Advest are shown to have played any part in seeking to manipulate Firefly's stock. Englebach was under no obligation to deal with Competitive's trader as if Yamada was a stranger to them or the company. For all this record reveals, Englebach had no reason to suspect anything untoward in Yamada's seeking Firefly stock through him, including Yamada's own discretionary accounts, for sale to Competitive.

For a fraud claim to prevail under the circumstances, plaintiff would have to show that Englebach had knowledge or with knowledge participated in the fraud. The facts before me more appropriately add up to Englebach and Competitive being duped by Yamada. True, Englebach worked with Yamada and supplied him with information, but all that this record reveals is that Englebach, like others in the financial community, believed Yamada to be a financial genius. He had been successful before, and Englebach cooperated with the hope that his good fortune would hold out. Indeed, there is considerable evidence in this record showing that Competitive had warnings which required it to act decisively in curbing Yamada's authority to handle its

portfolio long before May 12. In contrast, the record reveals that Englebach's first inkling that something was wrong was at the May meeting of the limited partners in Takara when Yamada revealed that all their money had been lost.

Finally, I agree with defendant that the sale of all of its Firefly holding by Competitive on May 19 could only have depressed the market. Since I find no actionable fraud on Advest's part, that issue need not be explored.

Accordingly, plaintiff's claims are dismissed and judgment is ordered entered for defendant.

It is SO ORDERED.

Dated: New York, New York  
September 29, 1975

*Robert L. Carter*

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ROBERT L. CARTER  
U.S.D.J.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
COMPETITIVE ASSOCIATES, INC., : 72 Civ 1847 R.L.C.  
Plaintiff, :  
-against- : NOTICE OF APPEAL  
ADVEST & CO., :  
Defendant. :  
----- x

NOTICE is hereby given that Competitive Associates, Inc., plaintiff named above hereby appeals to the United States Court of Appeal for the Second Circuit from the order of Hon. Robert L. Carter, filed October 1, 1975 ordering judgment dismissing the complaint as against Advest & Co. and from the judgment entered in accordance therewith.

Dated: New York, N. York  
October 30, 1975

SCHWENKE & DEVINE

By

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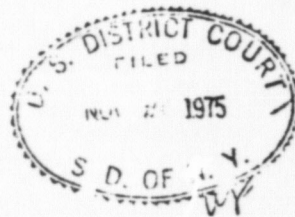
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*Carter, 17*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- x  
COMPETITIVE ASSOCIATES, INC., :

Plaintiff, :

- against - :

ADVEST CO., :

Defendant. :

72 Civ. 1847

----- x

The above entitled action having been brought on regularly for trial, before the Honorable Robert L. Carter, United States District Judge, on April 16, 17, and 18, 1975, and at the conclusion of the evidence the Court having reserved decision, and the Court thereafter on September 29, 1975, having handed down its opinion, constituting its findings of fact and conclusions of law; it is upon the findings and conclusions filed herein and dated September 29, 1975,

ORDERED, ADJUDGED and DECREED: That plaintiff, Competitive Associates, Inc. take nothing and that the action be dismissed as against defendant Advest Co. on the merits, with prejudice; and that defendant Advest Co. recover of plaintiff Competitive Associates, Inc. its costs of action, to be taxed.

Dated: New York, New York  
November 21, 1975

*Robert L. Carter*  
\_\_\_\_\_  
U.S.D.J.

JUDGMENT ENTERED - 11/24/75-

*Raymond F. Beugnot*  
\_\_\_\_\_  
Clerk of the Court

STATE OF NEW YORK  
COUNTY OF NEW YORK

EDWARD TAYLOR being duly sworn deposes  
and says: On January 7th, 1976 I served the  
within ~~on~~ <sup>JOINT</sup> appendix on  
Day, Berry & Howard the attorneys for the Appellee  
by mailing ~~one~~ <sup>one</sup> copy thereof  
at his office located at 1 Constitution Plaza  
Hartford, Connecticut 06103

Sworn to before me  
this 7th day of

January, 1976.

Lillian Weisberg

**MILAN WEISBERG**  
COMMISSIONER OF DEEDS  
CITY OF NEW YORK 4-1401  
Certificate filed in New York County  
Commission Expires September 1, 1979

